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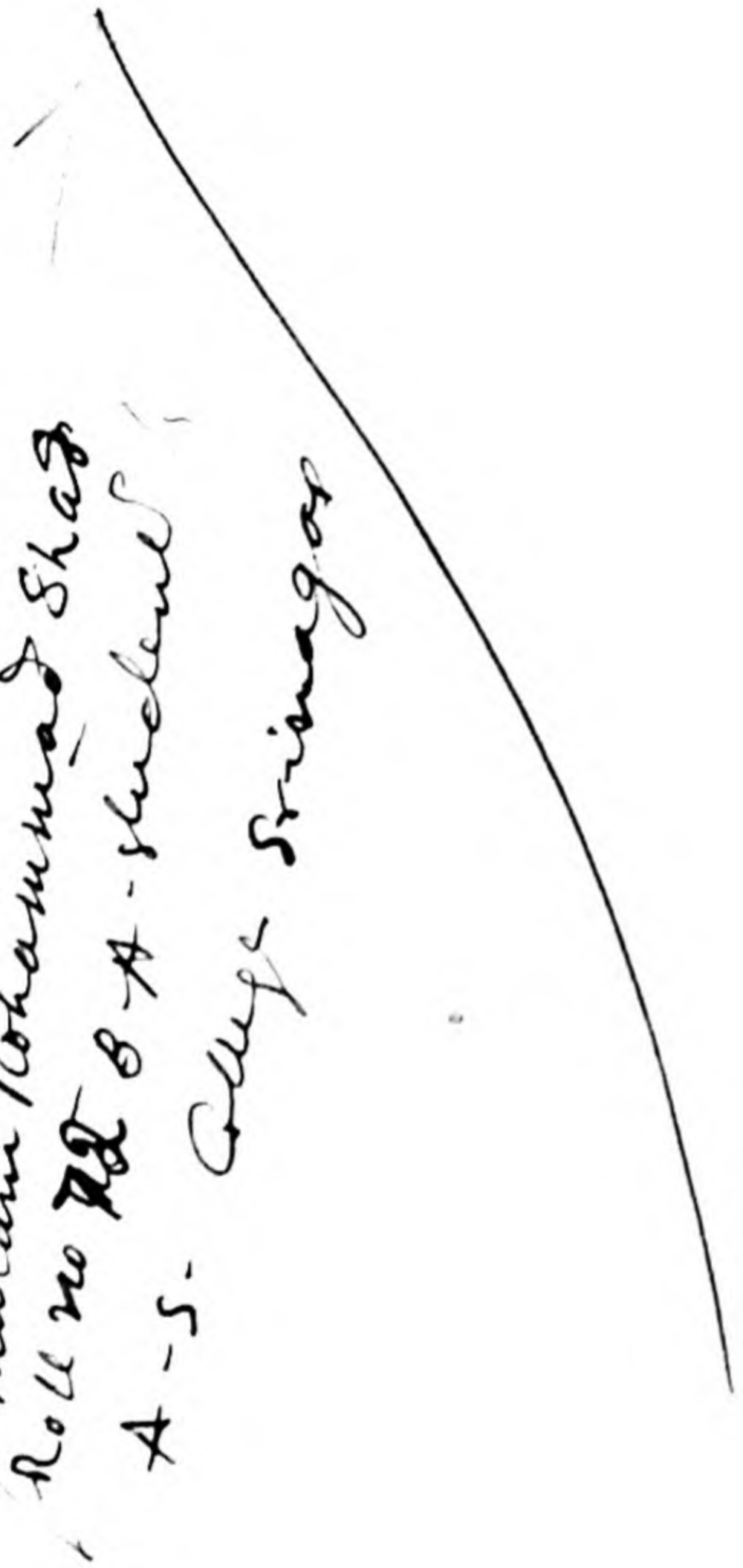

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SELECT
CONSTITUTIONS AT WORK

(England, France, America, Canada and India)

By

INDRA DATT SHARMA

Professor of Political Science Dayanand Anglo-Vedic College, Lahore, Lecturer in Political Science, Punjab University, Formerly Lecturer in Political Science, Lucknow University, Sometime 'Fellow' Lucknow University.

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FOREWORD

Professor Indra Datt Sharma has endeavoured in the following pages to describe the working of the Constitutions of Great Britain, France, the United States, Canada, and India. Wherever considered necessary he has treated the subject historically, explaining the origin and growth of the institutions. His description of the development of English and Indian Constitutions specially is illuminating. Being an experienced teacher of Political Science and History the author has successfully reduced in a reasonably short compass a great deal of information relating not only to the theory and practice but also the historical development of these Constitutions. He has incorporated recent changes, and his treatment, therefore, is uptodate. Those who do not want to make an elaborate study of books written by experts on these different Constitutions will find this handy volume to be of great assistance.

For a Country like India where we are still engaged in the process of constitution making, a comparative knowledge of the Constitutions and their working in other parts of the world is of special importance. There is not much literature of this type available to the readers and the author's contribution in this field, therefore, is most welcome.

C. L. Anand,
Principal of Law College,
Lahore.

28th March, 1944.

PREFACE TO THE SECOND EDITION.

This is the revised edition of 'Select Constitutions At Work' I have added fresh material to every constitution and have eliminated certain material which seemed to me to have lost its usefulness and importance in the light of changing political practice in a rapidly changing world.

In view of its usefulness the general plan of the first edition has been retained in this edition also. The reader will find this edition much improved more up-to-date and needfully revised.

I wish to point out that my thanks are due to my best teachers—my students—who are responsible for many improvements and changes in the present volume which emerged out of their doubts, discussions and difficulties in my seminar classes. If the revised edition helps them to understand and clarify their difficulties and stimulates deeper study of and interest in the working of governments I will consider my labours amply rewarded.

I am thankful to Principal C. L. Anand of the Law College, Punjab University, for kindly finding time to write a foreword to the book among his multifarious pre-occupations.

My former pupil and friend Mr. Nand Lal Gupta M. A. deserves my thanks for helping me in preparing the index and checking up references Messers Doaba House deserve to be congratulated for bringing out the book in these difficult times.

Krishan Nagar,
Lahore.
13th April 1944. INDRA D. SHARMA.

PREFACE TO THE FIRST EDITION.

In bringing out "*Select Constitutions At Work*" I am responding to a repeated and a wide spread demand for a suitable text book on the study of some select constitutions by the students of political science. It is my business and pleasure to help students to face without undue fear the difficulties of their first approach to the subject as well as the ordeal of examination. This book is the fruit of my experience with their requirements and difficulties. And if I dedicated this work to any one it would be to my students—past and present —because I feel that the book is as much theirs as mine, as it were they who by their never failing devotion and interest

in my classes and lectures made light the heavy task of preparing and presenting a difficult though immensly entertaining and extremely entrancing subject.

The purpose of this book is to describe the working of the constitutions of England, France, America, Canada and India. The book is designed to be useful not only to those who enjoy the advantage of a college professor, but to the private student as well as the general reader. It is hoped that the questions and topics and select references given at the end of each chapter will stimulate thought as well as further inquiry.

My debt to the giants of the subject—Lord Bryce. Professor Dicey, Professor Laski. Professor Finer, Sir A. Berriedale Keith, Professors Jennings, Wilson, President Lowell, Professors ,Munro, Ogg. Brogan, Profcssor Shah. Mr. Bose and Professor Joshi and the rest—will be apparent throughout to any one who knows anything of their excellent and superb writings This book, however, is *by no means* a digest or a summary of the works of these great authors, but an attempt to present the subject in an original, easily understandable and readable form.

I may say with some confidence that the reader will find some originality in the plan, method and manner of treatment of the book, also richness of matter together with many useful and new features. Every constitution is undergoing a strange metamorphosis and a shift of importance is taking place within the framework of political institutions in every country. I have tried to keep fully in view the changes taking place in the working of constitutions dealt with in this book. But it is not for me to speak of the merits of the book ; it is for others to judge and I should like to remind the critical that ' who faulteth not liveth not ; who mendeth faults is commended.' With all its defects and merits if this book promotes a healthy interest among the students of-political science for their subject I will consider my labours amply rewarded.

It is my utmost pleasure to express my thanks to all those who consciously or unconsciously have helped to make this book : thanks to my teacher Dr. V S. Ram, Professor and Head of the Department of Political Science, Lucknow University, to whom I owe my first knowledge and interest in political science ; to Mr. Parmanand Shastri, M. A. M. O. L., Librarian, D. A. V. College who patiently and with utmost eourtesy put up with my irritating habit of troubling him for books at all hours of the day ; and lastly to my pupil and friend Mr. Nand Lal, M. A., (final) for helping me in checking refrences, reading proofs and preparing the index.

D. A. V. College,
Lahore.
August, 1941.

INDRA DATT SHARMA.

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See my boy with how little wisdom the world is governed.

A Persian Saying.

CHAPTER 1

SOME DEFINITIONS AND EXPLANATIONS.

Constitution. A body of fundamental rules and principles according to which the powers of the government, the rights of the governed, the relations between the two and the relations and powers of the different parts of the Government are adjusted.

A constitution may be one written document or a series of documents enacted at a given time by a sovereign power capable of being amended or altered as time and growth demand : or again it may be the more or less definite result of a series of ordinances, legislative acts, precedents, judicial decisions, and customs of diverse origin and of unequal importance and value.

But whatever its form, a constitution will have the following clearly marked facts :

(1) how the various governmental organs are organised ;

(2) what power is entrusted to such agencies ;

(3) in what manner that power is to be exercised by those agencies.

Thus we can say that a constitution attempts to determine the exact position of the sovereign power.

Rigid Constitution. The term ' rigid ' when applied to a constitution does not mean that it cannot be altered or amended, but that it can only be amended or altered by some special or extraordinary legislative process, more elaborate than that required for ordinary legislation.

Flexible Constitution. Flexible constitution is one in which the whole or every part of it can be expanded, curtailed, amended, or repealed by ordinary legislative process with as much convenience and as freely as any other law.

Thus we can say that rigid constitution is one in which certain laws known as fundamental or constitutional laws cannot be changed in the same manner as ordinary laws, whereas flexible constitution is one under which every law of every description can be changed in the same manner and with the same convenience by the one and the same body.

Constitutional Law. It embraces all rules which directly or indirectly influence the distribution or exercise of the sovereign power in the state and the relations which the constituent parts of the sovereign power have with each other and to the subjects. In England though constitutional law is based more or less on private law, is a branch of public law and deals with the structure of the state and the rights and duties of the sovereign.

Law. Law may be defined as the will of the state expressed formally as in legislation or less formally as through acquiescence

in customs concerning its own organization and conduct and the civic conduct of the people living under its authority.

Private and Public Law. Private Law is that law which deals with those rights which can be enforced by one citizen against another, while Public Law is that law which deals with those rights which are asserted to itself by the state against citizens.

Government. May be defined as the agency through which the state expresses its will, moves to and fulfils its end. In other words the aggregate of all persons who exercise any function of the state constitutes the government of the state. They are the persons who evoke and direct the activities of the body politic.

Constitutional Law, what it means. The term 'unconstitutional' when applied to a law has at least three different meanings varying according to the nature of the constitution with reference to which it is used and according as law courts can declare it to be void or not.

(1) When applied to an Act of the British Parliament, it means that the Act in question (*e.g.*, the Irish Church Act, 1869), is in the opinion of the speaker opposed to the spirit of the English constitution. It cannot mean that the Act is either a breach of law or is void, because the British Parliament is the sovereign law-making body.

(2) When applied to an Act of the French Parliament, it means that the law (*e.g.*, extending the President's tenure of office), is opposed to the articles of the constitution. The expression does not necessarily mean that the law in question is void, for it is by no means certain that any French Court will refuse to enforce a law because it is unconstitutional.[1]

(3) When applied to an Act of the American Legislature it will mean simply that the Act in question is beyond the powers of the American Legislature conferred upon it by the constitution and therefore is void.

Conventions of the Constitution. There are certain rules which, though lacking the force of law, are nevertheless observed with almost as much regularity as if they were law or part of the law. These rules are generally called the conventions of the constitution.

Prerogative. Dicey defines the prerogative in these words: "The prerogative appears to be both historically and as a matter of actual fact nothing else than the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown".[2]

Dicey's definition is rather wide, as it might mean to include discretionary authority which is conferred upon the Crown by statute. Properly speaking, the prerogative does not include powers conferred by statute but only includes the common law discretionary powers of the Crown. In other words it means powers

1. Dicey. Law of the Constitution. Page 516 (VIIIth Ed.)
2. Dicey. Law of the Constitution. Page 420.

which the king can exercise on his own authority and entirely independently of Parliament.[1]

Parliamentary executive. Parliamentary executive means that the legislature chooses the executive from amongst its members and controls their appointment and dismissal and where the ministers are responsible to the legislature, (*e.g.*, in England).

Non-Parliamentary executive. When the executive whether it be the king and his ministers or a president and his cabinet is not appointed by the legislature and does not bear responsibility to it (*e.g.*, in America).

Veto. The right of the chief executive to refuse assent to any measure passed by the legislature.

Teller. A person appointed to count votes.

Whip. A member of a legislative body who is appointed by his party to secure the attendance of a maximum number of the members of his party at important divisions in the legislature.

Proxy. It is a term used for a person who is a substitute or an agent authorised to vote or act for another.

Quorum. It is the minimum number of members of a body—legislative, judicial or administrative—required to make the doings of those present valid.

Statute. A law formally passed by the legislature and approved by the executive.

1. Fraser. An Outline of Constitutional Law. Page 107. (Edinburgh 1938).

CHAPTER 2

THE GOVERNMENT OF ENGLAND.

THE DEVELOPMENT OF PARLIAMENTARY GOVERNMENT IN ENGLAND.

Introductory. In no other country of the world can one observe a political development so prolonged and continuous yet so orderly as one finds in the case of England. The methods and forms of no other government or state have been subjected to a keener study or copied with more flattering results than those of England. But no system of government can be understood correctly unless we have some knowledge of the forces and historical conditions which produced it. This is more so in the case of the English constitution. Although the governmental organisation of that country has undergone many a profound transformation in the present generation particularly in the post war period (1918—1943) ; and the process of transformation is not yet exhausted as is evident from the changes which the governmental organisation has been undergoing since the outbreak of the present war ; yet English political institutions more or less are rooted in the past and therefore a brief survey of constitutional development is called for.

History of the English Constitution. The English constitution is the result of continuous development through many centuries. While discussing the social and political history of England one comes across half a dozen distinct periods, but so far as the development of the constitution and governmental system are concerned these generally accepted divisions may be combined into four. The first distinct period in the history of the constitution extends from the time of the settlement and rule of the Anglo-Saxons through Norman-Angevin dynasties to 1485. This period is said to be the one in which the foundations of the constitution were laid.

The second period begins from the establishment of the Tudor dynasty through the early and later Stuart periods, including the Puritan Revolution and Commonwealth coming to end with the Glorious Revolution (1485—1688).

The third period extends from the Revolution of 1688 to 1919 : while the fourth one extends from 1919 to the present day.

The contribution of the earlier part (Anglo-Saxon) of the first period to the constituion of to-day is very little. It is only notable for the origin of institutions like kingship, Witenagemot and the divisions of local government—the hundred, the borough, etc.—which assumed great importance in later times. The later part of this period is more important in the building of the English constitution. It is noted for the enormous growth of the king's power and

for the extremely centralised governmental system of which the king was the absolute head. The most important contribution of this period to the development of the English constitution may be said to be the passing of the Magna Carta (June 15, 1215).

Magna Charta. To a student of the English constitution the importance and significance of the Charter lies not in the fact that an unwilling king was compelled to concede it, but is due to the remarkable summary which it furnishes of the fundamental principles of English government in so far as they had developed by the 13th century. The Charter contained little which could be called new. The object of its authors was not to frame a new constitution, or to suggest a new form of government, or a new code of laws, but only to demand good government and the redress of grievances. The Charter may be said to be in the nature of a treaty between the king and his dissatisfied subjects.

Taken as a whole the Charter guaranteed the following :

(1) Freedom of the Church ;
(2) defined in new and precise terms the remaining customs and privileges ;
(3) safeguarded the liberty of the boroughs ;
(4) guaranteed security of trade and property ; and
(5) laid down important regulations regarding law and government.

In addition to the above the Charter did something more. But what did it do ? "What the Great Charter did," says Adams, "was to lay down two fundamental principles which lie at the present day, as clearly as in 1215, at the foundation of the English constitution and of all constitutions derived from it. First that there exist in the state certain laws so necessarily at the basis of the political organization of the time that the king, or as we should say to-day the government, must obey them ; and second that if government refuses to obey these laws, the nation has the right to force it to do so, even to the point of overthrowing the government and putting another in its place.....In every age of English history in which question has arisen, in every crisis in the development of English liberty, this double principle is that upon which our ancestors stood and upon which, as a foundation, they built up little by little the febric of free government under which we live."[1]

The Evolution of Parliament. Thus the age-long struggle between the ruler and the ruled had begun as early as the thirteenth century. It went on for centuries till it became a central thread in the constitutional history of England and ended only when the English people had made themselves their own masters. In this great struggle the leading role on behalf of the

1. Adams G. B. Constitutional History of England, pp. 138-139 (London 1935).

nation was played by a great institution—parliament—which yet did not exist in 1215, the year of the Great Charter. The formative period in the evolution of parliament was from 1216 to 1307. The parliament came into existence as a result of the enlargement of the feudal Norman Great Council by the introduction of representatives of those classes—merchants, small landholders—which had no standing in feudal times. This was followed by the separation of this hetrogeneous mass into two chambers. The application of the representative principle was not an innovation in the thirteenth century. It had been applied in the sphere of local government by the Anglo-Saxons. In its application to the development of parliament the principle is said to have sprung from the twelfth century practice of electing assessors for fixing the value of real and personal property for purposes of taxation, and of jurors to place criminal matters before the justices of the king. The Council in the early thirteenth century was not a representative body, but it could be made one ; and this is what was actually done. The central government to facilitate taxation thought it expedient to adopt the principle of popular representation in the domain of national affairs, the principle had already shown its efficiency in local affairs, and it is for the adoption of this principle that there resulted the conversion, step by step of the feudal council into the national representative assembly—parliament. But not until 1295 can we say that parliament had taken its modern shape. The parliament called in 1295 by Edward 1st is known as the Model Parliament, because it brought together all the orders—the nobility, the clergy, and the commons—of which the English society consisted at that time. Therefore, it may be said, that henceforth parliament became an established institution in the English governmental system. That this parliament became bi-cameral and not tri-cameral is a matter of accident and not of design. The closing years of the fifteenth century witnessed a steady growth in the powers of the parliament. Thus kingship, local government divisions, principle of security of life. liberty and property, parliament, and principle of representation originated during this period and therefore it may well be called the period in which were laid the foundations of the English constitution.

Period of Reconstruction (1485—1688). This period extends from the establishment of the Tudor dynasty, passes through the Stuart period, Puritan Revolution, Common wealth and ends with the Glorious Revolution.

The first feature of the Tudor period (1485—1603) is the dominance of the monarchy. The nation tired and exhausted from the internecine wars of the Roses stood badly in need of repose and discipline. The Tudor rulers while systematically fostered the one relentlessly enforced the other. This period together with the early Stuart period may be described as the 'period of government by council' though Henry VIIIth and Elizabeth evaded parliamentary control. These two employed numerous tools to keep parliament in a position of subordination. Henry VIIIth got round his parliaments by shamelessly bullying

them, while Elizabeth used deceit, flattery and all other arts of which she had complete mastery. But parliament refused to be cowed down, and step by step went on gaining strength.

The second feature of this period is the controversy between autocracy and constitutional government which reached its culmination under the Stuarts. The Stuart doctrine of the Divine Right of Kings ran directly counter to the whole tendency in the development of English political thought. It was not the monarchy so much as the monarchs, who were at fault. Yet between the Stuart political theory and that of the parliamentary party there could not be any compromise. Both parties made an appeal to arms and civil war was waged to determine which of the two theories should prevail. As a result of this conflict good king Charles lost not only his crown but also his head and the Commonwealth came into being (1649—1654). A constitution was adopted in 1653—the first written constitution to be put into operation in modern Europe—called the Instrument of Government.

But Cromwell and his parliaments quarrelled incessantly as well as badly. After the death of the Protector monarchy was restored in England.

Restoration : The Restoration of 1660 was a compromise, because henceforward no English king (with the exception of the unsuccessful efforts of George III) dared to rule against the wishes of parliament.

Revolution of 1688. The closing year of this period is notable for the Revolution of 1688 which immensely contributed to the growth of parliamentary system of government in England. The Revolution and the Bill of Rights mark a culminating point in the constitutional development of England. All what followed is nothing more than a detailed application of the principles established in the seventeenth century. None of the principles—sovereignty of the nation, the supremacy of law, the omnipotence of parliament—were ever again seriously challenged. Kingship continued to be regarded at once a natural and a useful institution ; but the royal title to the crown henceforth was not by any vested or inherent right, but depended on the consent of the nation as expressed through parliament. In England the divine right was dead for ever.

The third period (1689—1919) is of more direct interest to a student of English government to-day as will be evident from the following survey.

By the close of the seventeenth century the framework of the English governmental system was almost completed in its larger aspects. Further, the basic principles upon which the government is run now-a-days can be said to have been securely established. But it must be pointed out that in point of fact the English constitution of 1689 was not the same as the English constitution of 1919. The Revolution not only closed one era but it began another in which the governmental system was not only expanded but was also carried into new directions and

adapted and readapted to new and changing conditions of life. But this process of change or overhauling has not been deliberate at any time from William III to George VI. The overhauling and the changing has been cautious and, if one may say, even unconscious. Still it is no exaggeration to say that the practices and rules which make up the working constitution of England to-day owe their nature and form to the process of development of the past two centuries.

During this period the main contribution of the seventeenth century was principles, that of the eighteenth and nineteenth centuries institutions. It is our purpose now to take notice of some of the more important developments during this period.

Reduction in the powers of the King. The period is noted for the working out that practical relationship between the sovereign on the one hand, and the ministers and parliament on the other which made it possible for the two houses of legislature acting through the ministry to exercise a continuous and complete control over the affairs of England. It has been mentioned that the Revolution (1688) sounded the death-knell of the divine right of kings which meant that the king ceased to possess or at least to exercise once for all many powers (prerogatives) which had been disputed Though William was aware of the conditions upon which he accepted the crown of England yet he was no figure head and did not hide his innate love of power. It is said that in spite of the dislike of his ministers he often asserted himself in the affairs of government. He was succeeded by Anne. Though far less aggressive that lady was strongly attached to the interests of the monarchy. It is only under the first two Hanoverians—George I (1714—1727) and George II (1727—1760), that the direct authority of the crown was reduced to a minimum. Most of those powers of government slipped quietly yet completely into the hands of the ministers and parliament—perhaps more into the hands of the ministers than into those of the parliament. But under the third Hanoverian—George III (1760—1820), who was always told by his mother to be a king there was a revival of the monarchical idea. Intellectually below the average and stubborn, he was honest, courageous and above all ambitious. He was resolved to recover for the king some measure of powers and prestige of which his predecessors have been deprived. His personal influence which he exercised for about two decades upon English government and politics was more than it had been during the reign of any king since William III. The House of Commons was alarmed and adopted a series of resolutions the first of which ran "the influence of the crown has increased, is increasing and ought to be diminished."

After 1782 the king's power fell off rapidly and during the closing decade of his reign which was clouded by fits of insanity all what George III had gained for royalty was again lost. Neither the Regency (1810—1820) nor George IV (1820—1830) gained either in power or popularity, though William IV (1830—1837) gained popularity but not power. Victoria (1837—1901) gained respect and affection for the monarchy from (1837—1901)

the British people which cannot be said to have suffered at the hands of Edward VII, George V, Edward the VIII and George VI. It will be pointed out elsewhere that the influence which the English king may wield in future and has wielded during the past twenty-five years in the actual conduct of government is considerable. But it must also be emphasised that this influence is only a shadow of the authority which the English king once—even upto the beginning of the eighteenth century—used to exercise. The influence which is exercised to-day by the English king is more personal than legal and is exercised more in the field of foreign affairs than in that of home affairs, and as against the will of the people expressed through the House of Commons it is negligible.

Supremacy of the House of Commons. The second important change since 1689 is the shifting of the power from the House of Lords to the Commons along with its democratization. Under William and Anne the House of Lords was more influential and dignified than the House of Commons. But under the guidance of Walpole (1721—1742) the House of Commons rapidly rose to supremacy. But the establishment of this supremacy of the House of Commons as then constituted did not mean the victory of popular government, it was only a step in that direction. The members of the House of Commons in the eighteenth century were either elected under a rigidly restricted franchise, or were appointees of close corporations and magnates. It was left for parliament during the nineteenth century to extend the franchise by a series of acts—Reform Act 1832, the Representation of Peoples Act 1867, The Ballot Act of 1872, the Corrupt and Illegal Practices Act of 1883, the Representation of Peoples Act 1884 and the Redistribution of Seats Act 1885, and in the twentieth century by the Representation of the Peoples Acts 1918 and 1928.

Evolution of the Cabinet. The importance of this period further lies in the fact that it produced one of unique features of the mordern English governmental system—the cabinet—not merely as an institution but as a system of government.

For its origin we must look to the ancient Privy Council. The king's council has a continuous history under various designations from the Norman days to recent times. In the early fifteenth century it was subjected to parliament with disastrous results. But in the sixteenth century the Tudors made it an all powerful instrument of their despotic power.

Under the Stuarts the Privy Council became unwieldy in size and therefore useless for purposes of administration. The king, therefore, began to select a few members of the council whom he could consult on affairs of state. The word cabinet is first found in Bacon's essays, but the first definite allusion to this new development is found in Clarendon's account of the year 1640. "Those persons," he writes (meaning Archbishop Laud, Lord Strafford, Lord Cottingen, Lord Northumberland, Bishop Juxon, Sir H. Vane, Sir F. Windebank, and the two Secretaries of State), "made up the Committee of State, which was reproach-

fully afterwards called the Junto, and enviously then in Court the Cabinet Council."[1]

It must be pointed out that the development of the cabinet was regarded with jealousy and mistrust from the start. This was more marked after the Restoration of 1660. Policy demanded numerous promotions to the Privy Council and Charles II "pleasure loving and quick-witted" was bored by the never ending debates in the Privy Council. He wanted business expeditiously and with less talk. The council had become impossibly large for executive business. Accordingly Clarendon suggested the setting up of four committees among which the work of the administration could be distributed. It is in these four committees of the council that the present administrative system may be said to have originated Besides these four formally recognised committees there was another informal committee in which the germ of the present cabinet may be found.

Thus Charles superseded the Privy Council and in 1679 delivered the funeral oration over the dead body of the Council. He said, " His Majesty thanks you for all the good advice which you have given him, which might have been more frequent if the great numbers of the council had not made it unfit for the secrecy and dispatch of business. This forced him to use a smaller number of you in a foreign committee, and sometimes the advice of some few among them upon such occasions for many years past. "[2] This oration was the virtual end of the old council as an executive body.

The decline of the Privy Council and the rise of the party system in Parliament greatly helped the development of the cabinet. For example in 1662 when England sold Dunkirk to France, the sale was actually discussed by the council which showed that it was still an important part of the government machinery, but in 1713 the Treaty of Utrecht was really agreed upon by the cabinet and was submitted to the council only for formal approval. Thus we may say that by 1713 the Privy Council had already been replaced by the cabinet. But one of the main objections to the new cabinet, at least in its earlier stages under Charles II, was with regard to its composition and position, its character and responsibility. It was a problem. It was necessary to harmonise the policy of the king and the policy of the parliament on some common line of action. By the restoration the importance of both the monarchy and the parliament had been recognized in the constitution. The cabinet members were responsible to the king alone. True, parliament could impeach them, true also that the king could pardon them. Hence the Settlement Act of 1701 restored the old consultative functions to the Privy Council and required those of the privy councillors who were present to sign a minute so that the responsibility for every decision may be fixed. But all such attempts to whip up the half dead council into life failed, specially because after 1689 normally the sovereign had to depend upon a ministry who was able to command a majority in the House of Commons.

1. Marriot, English Political Institutions, page 70 (Oxford 1925).
2. Marriot. Ibid, page 74.

A further stage in the development of the cabinet began with the accession of George I (1714). Unable to speak English fluently he ceased to attend the meetings of the cabinet. This absence of the king from the cabinet meeting had very important results. Hitherto the cabinet meetings had been meetings between the king and several individual members, each of whom expressed different personal views. But now with the absence of the king the cabinet met and after discussion arrived at a common decision and thus became a united and therefore a more powerful body. It thus became the rule that the cabinet reached decisions, and tendered advice to the king as a body and all members of the cabinet were presumed to be agreed on the advice tendered. Thus in fact the rule of collective responsibility, one of the main features of the modern cabinet system, of the cabinet came to be established. It did not happen all at once, but it was certainly recognized by 1792 when the Lord Chancellor was dismissed by Pitt from his cabinet for opposing the government policy in the House of Commons So long as the old idea of legal responsibility of ministers lingered the principle of collective responsibility could not be established. But during the eighteenth century the notion of legal responsibility gave place to the modern conception of political responsibility. Hence to-day the effective means by which Parliament compels ministers to obey or at least not too flagrantly to defy its wishes is the threat to make them resign and not the threat to impeach them.

While the theory of collective responsibility was being developed during the eighteenth century a parallel development was taking place in the office of the Prime Minister. At most of the periods of English history there had been a person with many of the attributes of the king's Prime Minister. Ralph Flambard under William II ; William Longchamp under Richard I; Hubert Walter under John ; William of Wykeham (resigned on an adverse vote in Parliament in 1371) ; Woolsey and Thomas Cromwell under Henry VIII ; William Cecil, Lord Burleigh under Elizabeth ; Clarendon immediately after the Restoration. Though all these possessed attributes of a modern prime minister but they lacked the essential characteristics. They had no regular and continuous connection with parliament and no connection with a cabinet or a council of ministers. But with the accession of George I we may say that a definite stage in the evolution of the office of the prime minister had been reached. Here again the absence of the king from the cabinet meetings had an important result, since in his absence someone else had to preside. The person who can be regarded as the first prime minister in the modern sense is Robert Walpole (1721—1742) though he always protested against the remark. But by the end of the eighteenth century we find Pitt openly declaring the necessity for having one minister " possessing the chief weight in the council and the principal place in the confidence of the king." Though the existence of the prime minister has been well recognized since 1800, his office was not legally recognized till 1917. Before that date the term prime minister only appears twice in any state documents, in the Treaty of Berlin (1878) in which Lord Beaconsfield described himself as ' Prime Minister of England,' and in a

sign-manual warrant of 1905 which established the precedence of the prime minister next after the Archbishop of York. The legal recognition came in 1917 in which year the Chequers Estate Act provided that the country estate of Chequers should be held in trust for successive Prime Ministers. The only other Act of Parliament which mentions the Prime Minister is the Ministers of the Crown Act 1937 which provides that a salary of £ 10,000 a year, instead of £ 5,000 as previously, is payable to " the person who is Prime Minister and first Lord of the Treasury."

The Post War Period 1919—1943. The post war period has witnessed some remarkable events in the English constitutional history. The confidence in democratic parliamentary government has been weakened and frankly speaking, to-day parliamentary government has fallen into disrepute. Even before the last war critics had found a good deal to object to its actual working not only in Great Britain but in other democratic countries also. It cannot be denied that the House of Commons like other democratic representative legislative bodies has also suffered in power and prestige. There has come into existence the dictatorship of the cabinet. This period has seen the establishment of dictatorships in Russia, Italy, Germany and in many smaller countries of Europe. To-day struggle for existence is going on between the democratic parliamentary systems of government and dictatorship. It remains to be seen whether dictatorship either in its Russian pattern or its Fascist type would win and come to stay, or it will pass away leaving the fruits of victory to democracy. But the greatest feature of this period is that democracy is on trial.

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Chapter 3

SOURCES OF THE ENGLISH CONSTITUTION AND CONSTITUTIONAL LAW.

In England constitutional law is not sharply distinguished from ordinary law ; therefore a student of the British constitution is faced with the difficulty that he cannot turn to any single source in the belief that he will find there the whole constitution. This difficulty is characteristic of Great Britain alone among countries having democratic constitutions. In most other countries of the world with democratic constitutions either there has been some occasion or a revolution to start afresh with a new constitution, which, because it was new, had to be put to writing as a whole. For example when the thirteen American colonies declared their independence of England they made a provision for their future government in a document called "The Constitution of the United States established and ordered by the people of United States." Thus this document together with the twenty-one subsequent amendments forms the whole constitution of the U. S. A. Similarly in Russia, Portugal, India, Canada, Ireland and other Dominions and in many other countries the constitution can be found embodied in one document. In the case of France it is contained in three constitutional laws passed in 1875 and afterwards amended in detail. But as pointed out in England it is different, because there has not been any such revolutionary upheaval as to require a completely new start with a new constitution. Important and far reaching changes have been made from time to time, but they are in the nature of amendments to the existing constitution and have not involved the creation of a new one Thus it is said that the English constitution has grown and not been made. The absence of any single document embodying the constitution of England led foreign critics like De Tocqueville to remark that " the English constitution has no real existence," and that the English constitutional law is no law at all but a ' cross between history and custom.' But such a criticism is not sound. It would be more correct to say that to ascertain the law and custom of the British constitution one has to look to a variety of sources and that English constitutional law is not a cross between ' history and custom ' but constitutional law proper within which are rules which are laws in the strictest sense of the rerm being equally enforcible by courts.

Meaning of Constitutional Law in England. Constitutional law, as the term is used in England, means all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in that country.

Where English Constitutional Law is not to be found. It is not to be found in any authoritative document as in the case of countries with written constitutions--U. S.A., France, Belgium, Ireland, Canada, etc.

Where English Constitution and Constitutional Law is to be found. 'The constitution must be found," says Anson, "by those who seek it, in statutes, in judicial decisions, in custom, in convention ; it is set forth in text books ; it may be learned in its important features by the observation of the course and conduct of politics; but in authoritative documentary form it is not to be found."[1] Therefore English constitutional laws are to be gathered from various sources; English constitution is the result of a gradual growth, it is still growing and will continue to grow through the coming into existence of new customs, conventions and by the passing of new parliamentary statutes.

What is English Constitutional Law made up of. It is made up of three things :

(*a*) *Common Law.*

(*b*) *Statutes.*

(*c*) *Conventions.*

(*a*) *Common Law* :—One of the most important sources of English constitutional law is the Common Law as laid down in judicial decisions in the courts of law. Many judicial decisions, important and unimportant, have turned upon principles of constitutional importance, and there are many branches of constitutional law which are to be found almost wholly in such decisions. For example, there is no statute that has ever declared the right of a private citizen to sue public officials for wrongs committed in the discharge of their duty. This right which is rightly one of most important constitutional rights of the citizen, depends upon a long series of judicial decisions which have recognised its existence. Further the question whether the Crown can be sued for breach of contract or for delict, has been the subject of several judicial decisions and it is to these decisions that one has to look for a statement of law on those points.

(*b*) *Statutes* :—Statute book is the second main source of constitutional law in England. There are numerous statutes which lay down the law relating to some part of the constitution ; some of these are old but more are modern. For example, the Act of Settlement, 1701 provides for the order of succession to the throne ; the various Representation of Peoples Acts which regulate the right of voting at local government and parliamentary elections ; the Parliament Act, 1911 which limits the power of the House of Lords—all lay down some branch of constitutional law. But each of such statutes deals only with one aspect of the constitution and none of them embodies the whole of the law, even the whole of the statutory law, of the constitution singly.

(*c*) *Conventions of the Constitution* :—The third source is the conventions of the constitution which are unwritten rules, or as we may say, a body of political ethics though lacking the force of law yet observed with as much regularity as if they were

1. Anson, Vol. I, Page 6.

part of the law, but not enforceable by courts. These rules are based on and composed of practices, precedents and usages which have been found from experience to be essential for the harmonious working of the constitution. Therefore any one who wishes to understand the British Constitution as it works in practice must understand the more important of them. For example, it is without doubt the law that the Crown could refuse its assent to a bill which had passed both Houses of the legislature ; but in fact the Crown never rufuses to any bill passed by the Parliament. Again it is an essential rule for the working of the English constitution that a government which has lost the confidence of the House of Commons must either resign at once or hold a general election in the hope of getting a majority in the newly elected House of Commons ; and though this rule is obeyed invariably it does not depend upon any judicial decision or any statute, but is only a convention. The conventions of the constitution not being part of law, cannot be enforced by the courts. This is to say, if any person broke a convention of the constitution he would not render himself liable either for any civil action or prosecution. Therefore the question arises, why should conventions be obeyed invariably? In other words, what is the sanction behind the conventions of the constitution ?

Why Conventions of the Constitution are obeyed ? Conventions are of three kinds. Firstly those which are simply principles of guidance or rules of convenience for ensuring a proper harmony between the House of Commons, the Lords and the Crown in the light of the principle of the sovereignty of Parliament. For example, we cannot do better than to cite Freeman quoted by Dicey[1] "The Cabinet are responsible to Parliament as a body, for the general conduct of affairs." They are further responsible to an extent, not however very definitely fixed, for the appointments made by any of their number, or to speak in more accurate language, made by the Crown under the advice of any member of the Cabinet." "The party who for the time being command a majority in the House of Commons have (in general) a right to have their leaders placed in office." "The most influential of these leaders ought (generally speaking) to be the Premier." A Cabinet when outvoted, on any vital question, may appeal once to the country by means of a dissolution."

Secondly, there are those conventions the aim of which is to secure harmony between legislative action and government on the one hand and the public opinion or the verdict of the electorate on the other. And because the legal framework of the British Constitution developed before the principle of popular sovereignty came to be accepted, there is no legal sanction behind such conventions, and therefore they are not only less definite, but also less sure of application. One example of such a convention is that governments do not enact legislation of a keenly controversial nature unless they have received a mandate from the electorate. It is necessary that such an item of policy should

1. Dicey. Op. cit., pp. 416—417.

have been a part of the programme on which the government fought the previous election, or if it was not, the Opposition should show by its action or inaction that this is not a matter of keen controversy.[1] This convention is applicable not only to legislation, but also to foreign or administrative policy. Another example may be quoted from Freeman, " If an appeal to the electors goes against the Ministry they are bound to retire from office, and have no right to dissolve Parliament a second time." Behind such conventions there is something of a political sanction.

The third kind of conventions are understandings of a general nature aimed at the better working of a particular institution. One example of such a convention is that no peer other than a law lord sits when the House of Lords acts as a Court of Appeal. Another example is the assurance to the Opposition in the Commons of adequate rights of self-expression. Dicey suggests another expample : " It is now the established habit of any reigning king or queen, to share and give expression to the moral feelings of British subjects." This convention is suggested as arising from the events of the abdication of Edward VIII.

After having noticed the kinds of conventions we now proceed to answer the question why they are obeyed. The observance of the conventions of the constitution is due not to any fear of impeachment of ministers—it has become obsolete—nor is it due to public opinion, but it is due to the fact that if any one broke conventions of the constitution he is sure to commit acts which will be illegal and will bring him into conflict with law courts by which he will be punished. For example if the convention that parliament should be convened at least once a year be not observed, the Annual Army Act would expire which will lead to many inconveniences, taxes would cease to be legally due and thus administration would become impossible without resort to illegal acts and violence. Take another example : Suppose that a government having lost the confidence of the Commons refused to resign or to dissolve parliament or having dissolved parliament failed to gain majority in the new House of Commons still continued in office. The members of the government would be clearly acting unconstitutionally—*i.e.* contrary to one of the recognized conventions—though they could not be prevented from, or punished for doing so by any court of law. But sooner or later the Commons would refuse to pass Annual Army and Air Force Act without which these forces cannot be maintained legally and which is passed annually. It would refuse to vote money required for the maintenance of other services and which for the most part has to be voted every year. The government would then either have to abolish the greater part of the ordinary public administration, which is practically impossible, or to carry it on illegally, which will involve not only the government but also many lower public officials in illegal activities for which they could be prosecuted and made liable for damages.

1. Greaves, H. R. G. The British Constitution, page 17 (London 1938).

Thus to agree with Dicey[1] in conclusion, "the conventions of the constitution are not laws, but.....derive their sanction from the fact that whoever breaks them must finally break the law and incur the penalties of a law breaker." They are obeyed because greater inconvenience will ensue from their disobedience.

Conventions are vague and variable. It must be pointed out that ultimately the object of the conventions is to give effect to the will of the electors or the nation, and as at time it becomes quite difficult to ascertain the views either of the nation or of the electors it is natural that conventions must be variable and uncertain. Hence conventions of the constitution are changed without any formality and are in fact constantly undergoing a gradual and imperceptible process of change to meet new conditions.

Some examples of constitutional conventions.

(1) The Crown cannot veto a bill passed by the two Houses of Parliament.

(2) The Parliament must be convoked at least once a year.

(3) A ministry must retire when it has lost the confidence of the House of Commons.

(4) The Cabinet are collectively responsible to parliament for the conduct of the executive and the individual members are responsible to the Cabinet as a body.

(5) The leader of the majority party in the House of Commons to be the Premier and to nominate his colleagues.

(6) When the majority do not represent the views of the electorate, there ought to be a dissolution of Parliament and a fresh election.

TOPICS AND QUESTIONS

1. What are the various sources of the English constitution ?
2. What is meant by political conventions ? What is the sanction behind them ; give some examples of political conventions ?

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CHAPTER IV.

THE CHARACTERISTICS OF THE ENGLISH CONSTITUTION.

Without any claim to exhaustiveness it may be said that there are seven characteristics of the British constitution which distinguish it from other constitutions in one way or the other. These characteristics are :

(1) Sovereignty of Parliament.

(2) Supremacy of law.

(3) Parliamentary executive.

(4) Flexibility of the constitution.

(5) Constitution is unwritten.

(6) Divergence between theory and practice.

(7) Presence of the hereditary principle in the constitution which has been discarded by the great majority of other countries.

Sovereignty of Parliament. Parliament means the House of Commons, the House of Lords and the King. Parliamentary sovereignty therefore means that these three acting together can make and unmake any law, be that law constitutional or otherwise. In most of the countries of the world, specially those with rigid constitutions, the 'fundamental' laws of the constitution are supreme, and the legislatures of such countries can neither touch them nor go against them. Therefore in such countries the constitution is supreme and the legislature is subordinate. But in England the legislature itself is supreme.

The British Parliament has a double character. It is at once a legislative as well as a constituent assembly. It is omnipotent because it is deemed to be the people and is not considered a body with limited or delegated authority. When it meets the whole nation is supposed to be present within its walls. Its will is law.

Two Aspects of Parliamentary Sovereignty. There are two aspects of Parliamentary sovereignty: (1) Positive, and (2) Negative.

In its positive aspect the sovereignty of Parliament means that its legislative power is unlimited and absolute. We may describe it thus, that the Parliament can pass, repeal or alter any law whatsoever without being subject to the legal control of any other person or body. It can pass laws with wide application such as the Act of Settlement, 1701, by which the descent of the Crown was finally fixed, the Parliament Act of 1911, or the Military Service Act, 1916; not only this, it can pass Acts applying to one

person, for example it passed an Act in 1887, known as the Duke of Connaught's Leave Act, 1887, by which special permission was granted to him to return to England from Bombay where he was Commander-in-Chief to attend the Jubilee of Queen Victoria.

In its negative aspect the sovereignty of Parliament means that there is no other person or a body of persons who can, under the English constitution, make rules which can override or derogate from an Act of Parliament.

Legislative Authority of Parliament unlimited. There are no limits to the Legislative Authority of the British Parliament. But there are exceptions. In England there are a number of bodies other than Parliament which enjoy legislative powers. For example, in England certain powers are given to local bodies such as County Councils, to legislate by making bye-laws. But the powers of such bodies are different from those of the Parliament in so far as they are defined and limited in their extent. Therefore when a local authority exceeds its power, its legislation, in so far as it is *ultra vires* will not be enforced by the courts. On the other hand the powers of the Parliament being unlimited cannot be exceeded, and no court would entertain the idea that an Act of Parliament was *ultra vires*. Why? Because such a thing is an impossibility. In this respect the British Parliament differs from the legislatures of many other countries. For example, the Congress in the U.S.A is not a sovereign law-making body because it has no authority to pass any legislation which is opposed to the American Constitution; if it passes any such law the courts will hold such legislation illegal and unconstitutional and will not enforce it.

The Parliament has sovereign and uncontrolled authority to make, confirm, enlarge, restrain, abrogate, repeal, revive and expound laws concerning matters of all possible kinds, civil, military, maritime, criminal, temporal or ecclesiastical. It has the power to alter the established religion of the land as it did in the reign of Henry VIII and his three children. It can regulate or model anew the succession to the British Crown as it did in the case of Henry VII and William III. "It can change and create afresh even the constitution of kingdoms and Parliaments as was done by Acts of Union." In short it can do everything which is not naturally impossible. A French writer has expressed this omnipotence of Parliament in a grotesque remark which has become proverbial: "It is a fundamental principle with English lawyers that Parliament can do everything but make a woman a man, and a man a woman."

The British Parliament is omnipotent not only with regard to public rights, but it is omnipotent with regard to interference in private rights also. For example, daughters and heirs apparent of a man or woman may by Act of Parliament inherit during the life-time of the ancestor. It may adjudge an infant, or a minor of full age. It may bastardize a child that is legitimate.

The sovereignty of Parliament is further demonstrated by the fact that it can pass Acts of Indemnity, which 'release persons who have broken the law from the ordinary consequences of their illegal

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actions.' To-day Acts of Indemnity are not passed so frequently as formerly. After the last war (1914—18), Parliament passed the Indemnity Act, 1920.

Parliament has twice since the Union passed Acts to prolong its life. The first occasion was in 1716 when the then Parliament prolonged its life from three to seven years by passing the Septennial Act, 1716. The other occasion was during the Great War when the Parliament, elected in 1910 for a period of five years, prolonged its life by about three years. Those who were opposed to the Septennial Act held that the members of the House of Commons were elected only for three years and therefore by extending their own term were breaking faith with their constituents and were acting unconstitutionally. But the passing of the Act demonstrated fully both in fact and theory the sovereignty of Parliament.

Limitations on the Sovereignty of Parliament. Though, legally Parliament has unlimited powers of law-making, there are obvious practical limitations to the power of Parliament. We can classify these limitations into two, *viz*: (*a*) External, (*b*) Internal.

External limitations are public opinion and its degree or competence to compel obedience. If Parliament passes laws exceeding a certain degree of unpopularity, such laws will not be obeyed, and may even provoke stout and active resistance. For example, if Parliament were to pass a law that all university students in England should wear only gowns and all girl students should wear only pants such a law would almost certainly be widely disobeyed. And again, if Parliament were to pass a law introducing slavery in England, it might well provoke active and stout resistance. Relations with other states, economic considerations etc., also constitute external limitations to the sovereignty of Parliament.

The possible range of the legislation of Parliament is also limited internally by its own nature. Legislation is an expression of the nature of the legislature. The boundary between internal and external limits is not well marked. But in a democratic body like the House of Commons internal and external limitations ought nearly to coincide.

Supremacy of Law. The supremacy of law or what is called by Dicey the rule of law, is the most characteristic feature of the English Constitution in addition to the sovereignty of Parliament.

Dicey in his classical work, *The Law of the Constitution*, enumerates three distinct yet kindred conceptions involved in the remark that the English Constitution is characterized by rule of law.

Firstly it means that every man in England owes obedience only to the law of the land. Or, if we put it negatively, 'No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or

discretionary powers of constraint.' What Dicey wrote in 1885 is still true to-day in that the government cannot act arbitrarily, without regard to the law. No minister, or government department can act as a dictator and inflict punishments arbitrarily. But according to Dicey's view the rule of law in this sense 'excludes the existence.....even of wide discretionary authority on the part of the government.' But to-day the government possess important discretionary powers entrusted to it by statute. For example, in many cases special administrative bodies have been set up—*e.g.*, Milk Marketing Boards—with judicial or legislative powers or both. In other cases such powers have been delegated to organizations representing professions, *e g.*, the Solicitors Discipline Committee, under section 28 of Solicitors (Scotland) Act, 1933, can censure or fine a solicitor for professional misconduct. Or again, the Poor Law Act, 1927 vests in the Minister of Health the direction and control of all matters relating to the administration of relief to the indigent It is provided by section 211 of the Act that :

> "(1) For executing the powers given to him by this Act the Minister shall make such rules and orders and regulations as he may think fit for
>
> (*a*) the management of the poor ;
>
> (*b*) the government of work-houses and the education of children therein, etc.

The second meaning of the rule of law is that every person is subject to the law of the land and to the jurisdiction of ordinary tribunals. In effect it means that public officials, whatever their rank, are on an equality with private citizens before the law. Any man whether he is the prime minister or a policeman or a private individual, who commits a wrongful act against another individual is subject to the same law. Of course a prime minister or a policeman can lawfully do certain things which private individuals cannot do. But if they go beyond their powers, and thus act illegally, they are in the same position as any other individual who acts illegally, and the mere fact that they hold official positions does not protect them. This is illustrated in Governor Walls' case.

In this case the accused was Governor of Goree, an island on the South African coast. Armstrong, one of the soldiers in the garrison, was ordered, without courtmartial or trial, to be stripped and tied to the gun carriage and whipped by Negroes in consequence of which he died. This incident occurred in 1782, and twenty years later, in 1802, when Governor Walls, the accused, was found in England he was tried on a charge of murder. His defence was that there was mutiny in the garrison and the punishment was necessary under the circumstances. The jury considered the plea of mutiny as flimsy, as he could not have left the island immediately after the incident, and also because he did not report the existence of such mutiny to the government authorities at home. The jury accordingly returned a verdict of guilty and the accused was hanged.

The equality of all before law is further illustrated in the Danby case. In this case Lord Danby, Lord High Treasurer, wrote a letter to Montague, then the British Ambassador at the court of Louis XIV directing him to make a secret treaty with Louis, one of the results of which would be that Charles II would get six million livers a year for three years and thus would become independent of Parliament. The letter was written under the express command of Charles and was countersigned by him. And as by the maxim 'the king can do no wrong' the king could not be touched, the responsibility was thrown upon his minister and Lord Danby was impeached for high treason for having in a traitorous manner usurped to himself legal power by treating in affairs of war and peace with foreign ministers without communicating the same to the rest of the Council and thus intending to cause danger to the safety and preservation of the kingdom. Danby pleaded, in defence, the order of the King and even produced a royal pardon. But he was committed to the Tower.

The point that illegal acts of officials are not legalised by a plea of state necessity was further demonstrated in a different way in R, O'Brien *v.* Home] Secretary[1] (1923). There the Court of Appeal in England held that the Home Secretary, in ordering the internment of an agitator, had exceeded his power, and pointed out that it was not concerned with the desirability of or necessity for, the internment order but only with its legality. Bankes, L. J., said: "It is inconceivable that the order for the internment of the applicant could have been made by the Home Secretary unless he had before him information which in his opinion not only justified, but required, the making of the order .....The court knows nothing of the facts upon which the Home Secretary acted, and if it did, it could have no right to be influenced by them. The duty of the court is clear.....The court must inquire, and inquire closely, into the question whether the order of internment complained of was or was not lawfully made." This case subsequently came before the Lords who held that they had no jurisdiction to hear an appeal in the circumstances.[1]

Thus it is no defence for an illegal act to plead that it was an act of state required by state necessity, but this rule does not apply when a state of martial law is declared.

Thirdly the rule of law means that all the legal rights of the citizens depend upon ordinary law and not upon constitutional guarantees. In rigid and written constitutions there is almost always included a declaration of 'rights of man' or 'fundamental rights' which are guaranteed to the citizen. It is considered that this incorporation of certain fundamental rights in the constitution is a special guarantee of their being specially secured to the citizen since the constitution can only be amended by a special and elaborate process. To take only one example among the many, the Russian Constitution of 1936 declares:—

"The citizens of the U.S.S.R. are guaranteed

1. Fraser. Op. cit., p. 18.

(*a*) Freedom of speech ;
(*b*) Freedom of the Press ;
(*c*) Freedom of Assembly and public meeting ;
(*d*) Freedom of street processions and demonstrations "

The use of the word guaranteed in the Russian Constitution and in many other written constitutions is significant, because it suggests that such rights are specially secured by some power higher than the ordinary law. But it is doubtful whether such constitutional guarantees are of any practical value, because provision is always made by which a constitution may be suspended. However that may be, there is no such constitutional guarantee of rights, and there is no document in which such guarantee is contained. The nearest approach to such a document or guarantee is the Bill of Rights (1689). But the Bill of Rights does not confer any new rights, it only makes a declaration of existing rights, and in any case the Bill of Rights is not higher than an ordinary law. Hence the individual who wishes to defend his right to freedom of speech or right to personal freedom has to rely not upon any constitutional guarantee, but upon common law of the land. The law in England does not make any distinction between 'fundamental' or 'constitutional' rights, such as right to personal freedom or freedom of speech, and ordinary rights such as the right to enjoy one's property without any interference by nuisances from neighbours. Certain rights may be classified as constitutional rights, but it is merely for the sake of convenience and will not mean any difference from other rights. If rights are infringed the the aggrieved person has certain legal remedies, and there is no higher or stronger sanction than that of ordinary law.

Conclusion. Conditions have changed since Dicey first wrote (1885). To-day it is maintained that the rule of law is not the characteristic feature of the English constitution as it has been since the 11th century till about a quarter of a century back.

To-day government possesses important discretionary powers which are entrusted to it by statute. It means that the rule of law in England since the last twenty-five years is less complete than before.

There are certain persons and classes of persons as pointed out by Fraser, who are partially exempt from the general rule that every one is suject to the same law.

Firstly, the Crown can not be sued for civil wrong and therefore is a partial exception. It is important, because it means that the Crown (which in practice means government departments), can not be made liable for the mistakes of its servants. No doubt the individual Crown servant is liable, but his employer, the Crown is not. Thus the government departments enjoy a privileged position as compared with private employers who can be sued for the faults of their servants committed in the course of their duties.

Secondly, the rulers of foreign states and their diplomatic agents are immune from the jurisdiction of the British courts.

They have a complete immunity from civil and criminal actions in British courts, unless they choose to submit to their jurisdiction.

Thirdly, judges also enjoy a large degree of immunity for what they speak or do in their judicial capacity.

Fourthly, Trade Unions have also been made immune from the jurisdiction of the courts in certain matters.

Thus we find that rule of law which had been a unique feature of the English constitution, is losing ground in England. Dicey was aware of it when he wrote. "The rule of equal law is in England exposed to a new peril."

Parliamentary Executive. The British constitution has a parliamentary executive which means a close union between the law-making body and the body which administers and controls the forces of the state. The system is characteristic of England ; the dangers involved in deadlocks between law-making, tax-granting authority and the executive body are absent. In this system the right to govern is not separately conferred on a popularly elected chief executive (the President in France) and on a popularly elected Parliament, but flows to the Cabinet through the legislature.

The present Cabinet system in England has grown up gradually through conventions with the increase of the powers of the lower House and corresponding limitation of the power of the King in the selection of his ministers. The main features of the system are :

(*a*) The virtual transfer of the power of appointment and dismissal of the ministers, who are not only members of Parliament and of the Privy Council but also heads of various important departments of administration, from the King to the Prime Minister ;

(*b*) The joint responsibility of the Cabinet to the Parliament for all their acts of omission and commission and individual responsibility of the Cabinet members to the Prime Minister and to the Cabinet as a whole.

Many other countries have now adopted the Cabinet system of England, but in America the form of government is non-cabinet ; the executive is responsible not to the legislature but to the President who is the executive head.

Flexibility of the Constitution and its unwritten character. The flexibility of the constitution follows as a matter of course from the sovereignty of Parliament. A flexible constitution is one in which changes or amendments take place by the ordinary law-making process in which there is no formal distinction between ordinary law and constitutional law.

In England there is no formal difference between fundamental and ordinary laws. Thus constitutional change in England is as easy or difficults, as any other political change. How easy or difficult must depend on the general nature of the political system. If the change proposed is in conflict with the views

of the Lords, or even of the King, it is subject to delays and obstacles. It is suggested that change in a non-democratic direction is more easy than in the opposite one. Flexible constitutions have become less flexible while rigid constitutions have become less rigid.

The English constitution is unwritten. We have already discussed this in a previous chapter. It may further be pointed out that it is said that with the passing of Parliament Act, 1911, the British Constitution has become a partially written one. The reason suggested is that the Parliament Act of 1911 prescribes lines of action of the Crown, the Lords and the Commons in their law-making functions in one document as is the case in other countries. More of it when we discuss Parliament.

Divergence between Theory and Practice. Owing to change in customs and the growth of conventions we find many instances of divergence between theory and practice in the English constitution. Thus the theory that Parliament is sovereign is belied in practice by the growth of the Cabinet and the system of Party Government which has given rise to a ' real dualism in the constitution, the Crown in Parliament, the Crown in Council.' Again, in the sphere of legislation, in theory laws are acts of the Crown in Parliament, but in practice it is the House of Commons which has virtual control over every important legislation. In the sphere of the executive, the theory is that the ministers are servants of the Crown but in practice the King appoints them on the advice of the Premier and cannot dismiss any single minister without the risk of losing the services of all due to the system of party government. In the sphere of royal prerorgatives, again, it is not the King but the Cabinet who exercises them.

Again, in ultimate theory the government of Great Britain is an absolute monarchy, but in form it is a limited constitutional monarchy and in actual practice it is a democratic republic.

Presence of hereditary principle long discarded by other countries. This is a specially distinctive feature of the British constitution. It contains a continued expression of the hereditary principle (*e.g.*, the House of Lords) which has long been discarded in the constitutions of major countries.

There are many other features which could be mentioned (*e.g.*, constitution is one of checks and balances, constitution is essentially judge-made) but they are not so important as those which have been discussed.

Topics and Questions.

1. What are the chief characteristics of the British Constitution ?

2. What is meant by sovereignty of Parliament ? Are there any limitations on parliamentary sovereignty ?

3. Do you agree that the rule of law has ceased to be a feature of the English constitution? Give reasons for your answer.

4. In view of Parliament's unlimited powers, explain how individual liberties are secure in England.

5. Comment :—"The English constitution does not exist."

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Chapter 5.

THE PARTY SYSTEM.

Political parties to-day are accepted as a natural and necessary piece of machinery of democracy. It is the vital principle of representative government. Parties are necessary for the proper working of democracy for two reasons. They are the means which afford to the citizen choice between alternative rulers. They educate him in, and explain to him, the merits and dangers of alternative policies. It is by them alone that people can rule. It is argued that they are necessary for the achievement of democracy. Social classes and economic interests organise themselves into parties to accomplish their purpose. But what is a political party? How to define it?

Definition of a Political Party. McIver defines political party as 'an association organised in support of some principle or policy which by constitutional means it endeavours to make the determinant of government.' According to Burke, a political party is a body of men and women united for the purpose of promoting by their joint endeavours the public interest upon some principle on which they are all agreed.' Professor Ramsay Muir describes a political party as 'an organised co-operation among those who think alike'. A modern German definition (1930) of a political party is 'a battle-fellowship established in the form of a permanent association, to obtain power over the state to realize political aims.' A political party may simply be defined as an association of men and women who are in general agreement upon the principles of government and their application.

In England politics are generally thought of in terms of 'party,' it is easily understandable. It is often advocated that party politics should be abolished. But what are the alternatives if party system or party prolitics in England is abolished? At one end there will be a 'loose and incoherent' individualism which will mean elections held on almost purely personal preferences and policies as numerous as the number of candidates; at the other end there will emerge a totalitarian state, which will crush opposition and stiffle criticism. One of the advantages of the presentation of clear cut policies, by political parties, is that it not only enables the elector to make his choice more easily, but at the same time compels him to recognise a relation between a candidate and a program of political action. It needs to be pointed out that there is quite a deal of confusion in regard to the system of political parties. This is as it should be, since party politics are necessarily a nice mixture of 'principles, programmes, and personalities.' The ultimate aim of all political parties is to obtain political power in the state. To secure this end all means are adopted to return as many members to the lower house as possible.

To-day we are accustomed to hear of party discipline, party rigidity party program, party loyalty, and party organization. But these terms had little meaning in England before the passing of the Reform Act of 1867. Before this date party politics in England were in a state of extreme looseness. For example, in 1838, the Radical Parkes wrote, "Politics are about as confused as Bottom's dream, which was past the wit of man to say what dream it was." The difference in principle between political parties is indicated by Greville's entry in his Diary (March 14, 1829) " .....that their policy was conservative: that of the Whigs subversive." Mill pointed out in 1865, that " A liberal is he who looks forward for his principles of government, a Tory looks backward."

Not a Deliberate Creation of Law. Political parties are unknown to the constitutions of democratic countries but for their proper working they are considered necessary. They are extra-legal and have not been deliberately created as political institutions. Even where they have developed serious defects in their working, governments have hesitated to step in to correct them by legislation. Such a situation is remarkable when the part which these political parties play to-day in the actual conduct of governmental affairs is considered.

History of Political Parties in England. Whatever the attitude to the parties in the past or their prospects of continued activity, they are, to-day, the corner stone of the British political system and what they are and do is of the essence of government in modern England. They are one of the important factors which determine the action of the Parliament, the Cabinet and the King.

Though the modern party system in England as the essential condition of the working of democracy in that country can be traced only to the Reform Act of 1832, for purposes of convenience the history of British political parties may be divided into seven fairly distinct periods :

(1) the period of Whig and Tory rivalry (1688—1714) ;
(2) the period of Whig ascendancy (1714—1761) ;
(3) the period of Tory supremacy (1761—1830) ;
(4) the period of Liberal ascendancy (1830—1874) ;
(5) the period of Liberal and Conservative rivalry (1874—1915) ;
(6) the Interregnum (1915—1922) ;
(7) Modern period.

1. Whig and Tory Rivalry (1688—1714). The closing decade of the seventeeth and the opening decade of the eighteenth century is the formative period of English political parties. A change was taking place among the hostile factions always ready to fight on any pretence, which were transforming themselves into peaceful organizations that agreed to disagree as to what the government should do. The idea of ministry composed of members of a single party and responsible to Parliament was gaining ground. For a time Whigs and Tories worked together, but because of

their conflicting views regarding the rights and duties of the Crown and the ministers, friction and inefficiency were bound to result from an attempt to harness two conflicting forces in the same yoke. The experiment having failed, the King began to select his ministers from one party only, and while the leaders of one party were in office those of the other stood by ready to snatch any opportunity to assume the reins of government whenever those in office lost the support or confidence of Parliament.

At first 'Whigs' and 'Tories' were merely nicknames, but they stuck and became party labels. The Whigs advocated religious toleration, supported parliamentary supremacy, and insisted that ministers were responsible directly to Parliament and not to the Crown. It will not be wrong to say that they were the political ancestors of the last liberal party. The Tories may be said to be the Conservatives of that period. They did not care much for religious toleration, but they were ardent supporters of the Established Church, defended royal prerogative against the sovereignty of the Parliament and held that it was the sovereign and not the Parliament who had the right to control ministers. They opposed the Hanoverian accession to the throne of England which involved them in two unsuccessful Jacobite rebellions bringing the party under disrepute which fact was partly responsible for the subsequent Whig supremacy.

2. Period of Whig ascendancy (1714—1761). The period begins with the accession of George I and is noted for the fact that the Whigs were in practically undisputed control of the government for more than two consecutive decades. It is in this period and under the Whigs that government by party may be said to have assumed a remarkably modern appearance. The Tories before the close of the period had become demoralized, and as a party had ceased to be formidable. But the long lease of power and freedom from opposition had weakened the Whigs also, and when Walpole resigned in 1742, the Whigs began to fall a prey to internecine disputes.

3. Tory supremacy (1761—1830). With the accession of George III in 1760 the time seemed favourable for the creation of a new party out of the fragments of the two old parties. A new party known as the 'King's Friends' was formed in Parliament. George III was taught to be a 'King' by his mother, and so he selected those men as ministers whose sense of responsibility to Parliament was not very keen and who were prepared to be subservient to the wishes of the King. Consequently the period from 1761 to 1783 is known as the period of 'personal government' of George III.

But the failure of the King's American policy, his incapacity and insanity and the threatening Irish demand for home rule combined to demolish to the ground his system of personal government. Under Pitt the Younger party government was revived and established on lines from which there has not been any substantial departure to the present times. Starting as a Whig, Pitt turned Tory gradually, and in time his personal following organized itself into a new Tory Party which for more than half

a century controlled the House of Commons. The House of Lords for some time remained a citadel of Whiggism, but was ultimately captured by the creation of a large number of peers from the Conservative Party. The ruin of the old Whig Party came with their sympathy with the French Revolution in 1789. All classes of people in England madly rushed to join the ranks of the new Tory Party because they abhored the 'excesses' of the French Revolution. Throughout the Revolutionary and Napoleonic periods the Tories remained in full and firm control.

4. Liberal ascendancy (1830—1874). The Congress of Vienna and the Peace Settlement of 1815 brought new problems which the old Tory Party was poorly fitted to solve. The nation required a progressive and forward looking leadership. With the fall of the Wellington Ministry in 1830 a rejuvenated Whig Party came into being under the leadership of Gray, and with the exception of two or three periods it continued to be in office till 1874. The party was successful to pass the Reform Act of 1832 under very dramatic and highly exciting circumstances. This Act enfranchised the urban middle class.

At this time the old names of 'Whigs and Tories' were being gradually discarded and the modern terms 'Conservatives' and 'Liberal' were coming into use. In 1842 the Conservatives had a brief spell of power, but they became so hopelessly divided on the question of the repeal of corn laws (duties on imported grain) that the Liberals had on easy return to offiee in 1847. The Liberals under Gladstone, a former Conservative, became a reform and progressive party, interested more in domestic problems than in colonial or foreign questions. The progressive current was so strong that the Conservatives were swept over and were obliged to accept reform measures over which they would have frowned a quarter of a cenutry earlier. For example, the Conservatives under Disraeli passed the Reform Act, 1867 thus extending suffrage to the urban working class. But the Conservatives under Disraeli were interested more in foreign affairs, in colonial problems and the empire than in home affairs. The Irish home rule question was beginning to be visible on the political horizon and was to become the most troublesome in British politics in the period following. The Liberals were again in the saddle between 1868 and 1872 and enacted a number of social reforms. But in 1872 the wheel of fortune began to turn against them and in 1874 the Conservatives came back to office.

5. Conservative-Liberal Rivalry (1874—1915). The Conservative Party was in office for twenty years following their victory in 1874 except for three brief spells of power for the Liberals. Though home affairs required attention the Conservatives devoted their main energies to foreign and colonial matters which fact resulted in the victory of Liberals in the 1880 election. The Liberals by the Reform Act of 1884 extended the suffrage to agricultural labourers and miners. Next year a redistribution in the seats in the House of Commons was effected. The Irish Home Rule Bill was coming to the front and in 1888 Gladstone brought forward his first Irish Home Rule Bill. The Bill was opposed by the whole Conservative Party and a number of Liberals.

In 1892 the Gladstone Liberals were returned to Parliament on the Irish question and in 1893 an attempt was made to enact a second home rule bill. It passed the House of Commons by a narrow majority but was killed in the Lords. The Conservatives were stubborn defenders of the Act of Union with Ireland (1800) and they came to be called 'Unionists'; and the Liberals who had refused to support Gladstone's Home Rule Bill of 1886 and 1893 came to be called Liberal Unionists By 1895 most of these had permanently identified themselves with the Conservative Party, and since that time the terms 'Conservative' and 'Unionists' have been used interchangeably in the press and on the platform.

Between 1895 and 1906 the Conservative or the Unionist Party remained in office. Important social and industrial legislation was enacted. The most hotly contested issue during the period was imperialism, and the most commanding figure was Joseph Chamberlain. This period is further noted for the South African War.

The Liberals regained power in 1906 and continued to be in control until after the outbreak of the last World War in 1914. In the pre-war period social and political measures of reform were carried out by the Liberals in the face of the opposition of the Conservative Party as well as that of the Lords. New and far-reaching taxation proposals were included in the 1909 budget to meet the cost entailed by the new social and political legislation passed. This brought about the memorable struggle with the House of Lords the result of which was the Parliament Act of 1911. Act this time Liberals were seriously embarrassed by the question of women suffrage over which they were divided among themselves.

6. The Interregnum (1915—1922). Then came the war which shelved all proposals for domestic reform but which required the concentration of all the energies of the nation upon the successful prosecution of the war. This led to a party truce and Liberal government gave way to a coalition government. It was composed of Liberal, Conservative and even of the representatives of the new Labour Party.

The creation of a War Cabinet and the reorganisation of the Cabinet by Lloyd George in 1916 marked the beginning of serious rupture in the Liberal Party and led to the formation of an anti-Lloyd George group called 'Independent Liberals.' In the early part of 1918 the Labour Party ceased to support the government and began to work independently in the hope to gain power some time in the future.

But the election of 1918 was a victory for the coalition government; it was also an indication that the era of Liberal rule was at an end. This coalition government, really Conservative, continued in office till 1922. When the political partnership between Liberals and Conservatives was dissolved, Lloyd George, the Liberal head of the coalition resigned and Bonar Law, the Conservative, stepped into his shoes.

Since 1922. This period is distinguished by three things: (1) by the continued bickerings in the Liberal Party and an

unsuccessful attempt to bring harmony and offer a solid front to the Labour and Conservative Parties ; and (2) by the emergence of a Socialist Party ; and (3) by the disappearance of the two party system and the appearance of what may be called the multiple-party system.

This has led to interesting results. In the 1922 election the Conservative Party won a very small majority of seats and remained in office till 1923. In the election held in December 1923 the Conservative Party lost its majority and the Labour Party having elected more members than the other opposition party was called upon to form a ministry. But it remained in office only for nine months It lost the support of the Liberal Party and dissolved the Parliament in August 1924. In the following election the Conservative Party secured about two-thirds of seats of the House of Commons, while Labour stood second. Thus the Baldwin Conservative Government came into office and lasted practically for five years. Baldwin did not wait for the term of Parliament to expire, dissolved the Parliament and general election followed in May 1929. Once again the Labour Party was fortunate. It secured plurality, but not majority in the House. (It won 289 seats ; the Conservatives 260 ; the Liberals, 58 ; and minor parties, 8). Its leader late Ramsay MacDonald was invited to form the second Labour Government of Great Britain. The Labour Government of MacDonald continued in office till 25th August 1931 when Ramsay MacDonald deserted the Labour Party and formed the National Government. The National Government composed of various parties continued till July 1935, when Baldwin succeeded the late Ramsay MacDonald, and in November 1935 Baldwin forced a general election. The National Government was returned into office. In May, 1937 Baldwin resigned and was succeeded by Neville Chamberlain of the Munich Pact fame ; the government was reconstructed in 1940 when Churchill succeeded late Neville Chamberlain as Prime Minister. Thus to-day all political parties are represented in the National Government and are running the government.

Present Parties and Programmes : Conservative Party. It is also known as the Unionist Party ; it forms the large majority of the supporters of the National Government. It is a successor to the Tory Party of the 18th and 19th centuries. It favours only those reforms which are based on tried and inherited institutions. It is opposed to Socialism, nationalization of property and state interference in the domain of individual rights.

The guiding principles of the Conservative party as laid down by Neville Chamberlain on his assumption of office as Prime Minister in May, 1937, are :

(1) to keep the peace,

(2) Britain should be made so strong as to be respected by other nations,

(3) to maintain and increase prosperity, trade and employment.

(4) to steadily improve the condition of the people.

The Conservative party has always been predominated by the snobbish autocrat, the great land-owner, the financier, the rentier, and the big business man. Occasionally a worker has found his way on its executive. We have no certain knowledge of the sources of its funds. It depends mostly upon large contributions from wealthy men. There is another interesting source also. When one of its 'safe' constituencies is vacant, there is a bid for it and the highest bidder who agrees to pay the costs of running the local organisation is elected. Considerable part of its funds has been raised by a private sale of honours. Some of its leaders are Lord Halifax, W. Churchill, Sir Samuel Hoare, Sir Kingsley Wood, W S. Morrison, Duke of Zetland, Captain Margesson, Earl Baldwin and Captain Anthony Eden.

Labour Party. The complexion and habits of this party are different from those of the Conservative Party. The bulk of its membership comes from national organisations (trade unions, Co-operative and Socialist societies and local organisations. Mainly composed of working men one rarely finds a rentier or a big businessman among its representatives. But there are a handful of barristers, doctors, and teachers; there are a dozen members of the House of Lords about half of whom are peers created by Labour Government to fulfil the statutory requirements of tenure of office. The essential direction of the Labour Party is in the hands of the working class with a strong 'admixture' of intellectuals (like H. J. Laski) and small business man.

The local organizations nominate and finance candidates who after being approved by the National Executive run as official Labour candidates. The party has an agreement with the Co-operative Party which represents the interests of consumers organized in co-operative societies, and which forms a part of the Labour Party in the Parliament.

The Labour Party is opposed to 'Popular Front' in Great Britain. According to its recent-most Manifesto on general policy, "Labour's Immediate Programme," issued in March 1937, its policies may be summed up as below :—

(1) In Foreign policy to make any endeavour to remove the economic causes of international rivalry, to strengthen the League of Nations as an instrument of international co-operation and collective security ; to promote disarmament by international agreement, to substitute an international Air Police Force for National Air Forces and to establish an International Service of Civil Aviation ; nationalization of armament manufacture ; maintenance of such armed forces as are necessary to defend Great Britain and to defend Great Britain's obligations as a member of the British Commonwealth and of the League of Nations ; establishment of a Ministry of Defence (accomplished) to coordinate and democratize the Defence Services and increase their efficiency.

(2) In Imperial policy (as according to policy documents 'For Socialism and Peace' and 'The Colonial Empire') favour self-government for India (what did it do while in office !) ; principle

of trusteeship in British Colonial Empire with development of self-government and furtherance of economic well-being of inhabitants along Socialist lines ; safeguards for native peoples in dependencies against exploitation by European capital, (not against British ?) ; prevention of forced labour and of injurious or inequitable conditions of employment ; protection of such peoples in occupation of their land and in exercise of civic rights, and development among them of services of health and education ; the strengthening and extension of the authority of the Mandates Commission of the League of Nations

(3) In domestic policy immediate measures to be carried out in a full term of office : national control of finance, the land, transport and coal and power ; organization of home production and control of imports ; provision of sufficient and suitable food through the social services for children and for expectant and nursing mothers ; improvement of wage standards ; legislation to secure a shorter working week and holidays with pay ; the raising of the school-leaving age with adequate maintenance allowances ; an extension of health services ; the provision of increased pensions on condition that pensioners retire from industry and an extension of the pensions system ; adequate compensation for accidents ; provision of healthy homes at reasonable rents ; abolition of the ' means test ' in unemployment insurance and provision of adequate maintenance for the unemployed ; national planning of the distressed areas with state responsibility for the location of industry.

The funds of this party are got by voluntary levies imposed upon themselves by the members of the Trade Unions ; a considerable part of the local funds is secured by contribution of a penny a week from members constituting parties ; money is also collected by organizing dances, bazars and contributions raised at meetings.

The Independent Labour Party. It is not easy to assess objectively the exact position of the Independent Labour Party in modern English political life. It is an older party than the Labour Party : in fact it may be said to be its parent. It is a small party, in fact a small group.

The Independent Labour Party defines itself as " An organization of Socialists whose objective is the establishment of a Socialist Commonwealth".

The method which the Independent Labour Party employs in the realization of its aim may be said to be parliamentary : It believes in electoral activity to obtain power, both in the parliament and in the local bodies. It desires the unification of working class movements, it rejects in any form collaboration—political or industrial—with the capitalist class ; it suspects and disowns all reformist schemes.

The aims of the Idependent Labour Party are remote as well as immediate ; once it is in power it will put into operation a scheme of socialism which will include :

(*a*) The socialisation of the most important economic resources of the country.

(*b*) The redistribution of national income on the basis of economic equality.

(*c*) The organization of imports and exports under national control and ownership.

The Party is opposed to any imperialist war, and believes that universal peace is possible only under universal socialism.

All socialists who accept the constitution can become the members of the Independent Labour Party But they must not be members of any other political party and they must be fully active both financially and personally.

As to its organization, the members of the Independent Labour Party are grouped into locally autonomous branches, which are further grouped in Federations. A larger area—division—comprises branches and federations withen that area. It is controlled by a council which has the power to make rules, to carry out activities, and to call an annual conference.

There is the National Administrative Council which consists of the chairman of the Party, the treasurer, four members elected by the Annual Conference, one member elected by each divisional area, and one representative from the Guild National Committee.

The final authority is the Annual Conference which usually meets at Easter. An important feature of the Conference is the preliminary discussion of the ' Basic Resolutions ' together by branches and divisional conferences. These Basic Resolutions are prepared by the National Administrative Council.

The membership of the party is small—from 10,000 to 12,000; due to its small membership it is not well off financially. The sources of its income are affliation fees from individual members, percentage contributions from members according to their incomes, quota contribution from branches, and special donations.

Some of the leaders of the Independent Labour Party are James Maxton, A. Fenner Brockway, J. McGwem, G. Buchanan, Campbell Stephen, C. R. Atlee, Arthur Greenwood, Lord Snell, J. S. Middleton, J. R Clynes, H. Morrison, Hugh Dalton, Professor Laski, Sir Stafford Cripps, Ellen Wilkinson, Wedgwood Benn.

Liberal Party. This party is a successor to Whig Party. The former Lloyd George Liberals rejoined the Liberal Party when Parliament met after the 1935 election. According to its election manifesto issued in October 1935, its policies are :

(1) In Foreign policy to support and strengthen the League of Nations and maintain sufficient defence forces to meet the needs of the times ; it advocates strict control over manufacture and sale of armaments to remove private profit motive ; desires to free commerce from chains of tariffs, quotas, subsidies, and unstable currencies ; to restore prosperity and a more peaceful world.

(2) In domestic policy it advocates employment of the capital and labour lying idle on public works ; promises to carry out its

published plans dealing with the organization of industry and the status of the worker ; advocates public ownership of land, development of agriculture, reform of the coal industry and raising of the school leaving age : promises to revise the electoral system by adopting proportional representation.

The funds of the Liberal Party till 1916 were raised in much the same manner as those of its historic rival, the Conservative Party. But the funds of the Lloyd George section from 1917 to 1922 were secured by an almost open sale of honours. Since 1922 the Liberal Party has fallen on difficult financial days.

Some of its leaders are Sir Archibald Sinclair, Sir P Harris, Sir Hugh Seely, Lloyd George, Lord Crewe, Issac Foot, and Professor Ramsay Muir.

The Communist Party. This party is the British Section of the Communist International, which has been recently abolished. The Party takes as its guiding principle the conception of Marx. It is influenced in its policy and program by the Russian Revolution. According to Robson, the Cummunist Party " takes as its guiding principle the conception of Marx, brilliantly brought to fruition in Soviet Russia, that the organised working class is the only force with the ability and the will necessary to end capitalist rule and establish the new socialist society."[1]

According to the program of this Party after taking over, without compensation, the banks, the big factories, the mines, transport undertakings, etc., the British Soviets will abolish unemployment and provide work and wages. The Party has an elaborate program for the communal re-organization of all formers of industry, of commerce and agriculture, and of all the social services. This program is all embracing, and covers the protection of the ' petty bourgeoisie ' (?). Thus the policy of the Communist Party of Great Britain may be said to be the ultimate establishment of Soviet Britain.

The Party is organised as a general staff of the army preparing for the attack on the foundations of the present day capitalist society. It consists of 12,500 members who accept the statutes of the Third International and of the Communist Party of Great Britain and pay a contribution of 3d. a week. Unemployed workers pay only 1d. The Party makes an annual contribution to the Communist International, which amounts to 1 s. per head per year out of the regular contribution paid to party funds. It claims that it does not take ' orders ' from the Communist International, nor does it accept ' Moscow gold,' but that ' it is trying to carry out in its own way what is, after all, an international policy.'

The leader of the Communist Party of Great Britain is Harry Pollit. So far, it has elected two representatives in the House of Commons at different times. Its first representative in the House of Commons was an Indian—the late Mr. Saklatwala who was M P. for Battersea North. In 1935 elections the Party elected one member to the Parliament—Mr. Gallacher, M.P. for West Fife.

1 Robson, R. W. The Communist Party, p. 3.

The British Union of Fascists and National Socialists. If developments in Russia led to the formation of the British Communist Party, the success of Mussolini (after his march on Rome, October 28, 1922), and the establishment of the Fascist State in Italy, gave heart to some people in England. Further impetus and encouragement was provided by coming into power of Adolf Hitler in Germany on January 30, 1933. In England a new party which came to be called 'British Union of Fascists and National Socialists' was established in September 1932.

The object of the British Fascist Party is to establish a totalitarian State of the type of the Italian and the German State in England. This party is the youngest of the English political parties—only two years of age, almost an infant in comparison to some of the other English political parties—Conservative, Liberal and even Labour.

It regards itself more as a 'movement' than as a party. It is almost secretive, it does not publish any written constitution, because the 'movement' is authoritarian and is based on the principle of 'leadership.' In the party responsibility is arranged accordingly, *i.e.*, from top to bottom. The leader of the 'movement' appoints local leaders, who in term make lower or further appointments.

The National Headquarters keep in close touch with local districts which are identical with parliamentary constituencies through area and district inspectors who control and encourage the supporters of the 'movement.' There are three divisions in the movement and individual members belong to any of the three according to their political activity.

The 'Movement' candidly claims that it is revolutionary. Membership figures are not made public—they are not published but there are about six hundred organizations. The Fascists hold that their members are more politically conscious or alert than either the members of the Conservative or of the Labour Party. The Fascist Movement in England is as active and effective in political propaganda as any other English political party.

The Fascist program is clear cut and authoritative. The Party holds training classes for speakers in all districts and discussion is both encouraged and invited, but the fundamentals of the 'movement' cannot be questioned.

Party Machinery. The main goal of the Conservative, Liberal and Labour parties and of their activity is the control of the National Government through the election of a majority of members in the House of Commons; this is the main purpose underlying the development of a highly organized party machinery. Elections to the House of Commons do not take place at stated intervals as is the case in America, but whenever an important issue is joined in the House of Commons, therefore members have no assurance of serving out a full five-year term, and it is rarely so: thus a general election may descend upon the people like a thief in the dark. Hence parties are compelled to maintain an efficient, alert and active organization all the year

round. The party rank and file must always be ready to give battle at the first sound of the trumpet ; if they rest they must sleep on their arms. This is the reason why one finds an elaborate hierarchy of local and national party agencies and other auxiliary organizations.

Local Agencies. The rank and file of each party are organized in local associations which are found in every rural district, every small town and every borough or parliamentary division. Some of these associations are open to members of both the sexes, while in others they have their separate organization. The local associations which form the basic unit of the Labour Party are trade unions and local labour groups. Its local associations do not cover the country as thoroughly as do those of the Conservative and Liberal parties. The Labour Party has been making efforts to develop them in the rural areas of England.

National Federations. The Conservative Party, in about 1867, began federating local associations into a national organization—National Union of Conservative and Constitutional Associations—called the Conservative National Union which reached its present form of organization in 1885. The Liberals followed suit, and in 1877 formed the National Liberal Federation. The Labour Party also has its federation of local associations. Local Labour associations are first federated in district, divisional, or provincial federations, and these are united in a national federation. The representatives of all these local associations meet annually in a Liberal Council, or Conservative or Labour Conference, in which certain party officials are elected, party affairs are discussed and plans laid for the future.

The central office. But the most important element in the British political party organization is the. Central Office with its paid staff maintained in London by each party. The party central office has considerably grown in size and importance during the last quarter of a century. To-day the central office is ' the keystone of the whole party, the focal point of party control.' It is the symbol of a highly centralised party control, so much so that in election campaigns local associations do not legally exist, they are disbanded and are revived only after the election. The central office does all the electioneering work through its agents scattered all over the country. The central office as a national unifying agency of the party, guides and advises local associations in dealing with their problems. When the constituency has no favourite son it is the central office which recommends some one to be adopted. It provides speakers, election literature, and helps in the raising of money and is in general charge of all activities connected with the election campaign.

At the head of the central office stands a comparatively new official called the Chairman of the Party Organization in case of the Liberal and Conservative Parties and the Party Secretary in the case of the Labour Party. The office is considered of great importance and influence and the holders of the office have always been members of Parliament ; the incumbent is considered entitled to cabinet position.

Conclusion. Thus there are six political parties in England. All these parties beg for the support of the electorate, and in this sense all of them are legitimate as well as constitutional. All parties have a right to existence because it is perfectly legal that any person, within certain limits, may advocate views and bring forward schemes or proposals for change in the existing order of things both spiritual and temporal—by lawful means. In certain quarters in England as elsewhere terms like Communist, Socialist, Capitalist, and Fascist are regarded with contempt and repugnances. But such an attitude is neither wise nor helpful in politics. Each party has not only a right to existence, but a right to the expression of its views; and each is worthy or otherwise according to its opinions.

The work of all the political parties is mainly the same—to educate the electorate; and to obtain majority of seats in the House of Commons and then provide the government of the day. All parties have complex organizations which are occupied feverishly in supplying the needs of their constituents not only at the time of national and bye-elections, but also between them as well.

The relationship between the House of Commons and political parties varies as it varies between the parties themselves.

Members of the Labour Party are more 'tied' at least apparently, than the members of the Conservative or Liberal Party. It must be pointed out that no party can really control a member of the House of Commons who is free to speak and vote as he likes But it is more in theory than in practice. The lot of the independent candidate is hard indeed and is becoming more so every day.

Each political party makes use of the platform, of the press, of socials, of whist drives, of cinemas, of lectures and pamphlets to keep and encourage the faithful, to persuade the suspicious and the doubter and to convert the opponent.

TOPICS AND QUESTIONS.

1. What is understood by the term 'Political Party'? How do you define a political party?

2. Describe fully the party machine in England.

3. Compare and contrast the programme and policies of the Conservative and the Liberal parties with regard to (1) Foreign Policy, (2) Domestic Policy and (3) Commonwealth.

4. What do you think of the programme of the Labour Party?

5. What do you think of the future of the party system in Great Britain?

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CHAPTER 6.

THE HOUSE OF COMMONS.

Parliament. The legislature for Great Britain and for Northern Ireland is the Parliament which is a bicameral body consisting of the House of Commons and the House of Lords. Formerly there were two separate parliaments, one for England and Wales and one for Scotland, but these two were united in 1707.

From 1801 up to 1922 Ireland formed part of the United Kingdom and was represented in the British Parliament, but the Irish did not like this union. In 1921, after two years of war Ireland became the Irish Free State by the Irish Free State Act, 1922. It is now a separate state and is known since 30th December, 1937 as Eire. Northern Ireland still forms part of the United Kingdom, and has its own parliament at Belfast to deal with local affairs, but sends thirteen representatives to the British Parliament.

"The Parliament at Westminster consists of three parts: the House of Commons, the House of Lords and the King. In theory each of these parts is equally important, and except when the special provisions of the Parliament Act, 1911, apply, the concurrence of all the three is essential for the passing of an Act of Parliament. But this is only in theory, in practice the most important part in law-making is played by the House of Commons; the part of the King in law-making is limited to giving his assent to bills after they have been passed by the two houses of legislature. In theory the King could still refuse his assent to a measure, and if he did so the measure would not become Law; but in practice it would be politically impossible for the sovereign to refuse his assent. The last time when the sovereign refused assent to a bill was in the reign of Anne. The Royal Assent is usually given not by the King in person but by a Royal Commission sitting in the House of Lords. (It may be concluded then that the King's participation in the making of laws is only formal and it need not be further considered.)

House of Commons. The House of Commons is not only the largest, the oldest but also the most important law-making body in the world. 'When,' wrote Spencer Walpole half a century ago, "a minister consults Parliament, he consults the House of Commons; when the Queen dissolves Parliament, she dissolves the House of Commons. A new Parliament is simply a new House of Commons."[1] Its history can be traced back to the time of Simon de Montforte's Parliament of 1265 and the Model Parliament of 1295 and is full of interesting, important and even dramatic incidents. Its long and eventful career cannot be condensed within the limits of a short chapter, but the

1. Spencer Walpole. The Electorate and the Legislature, p. 48.

reader must understand that its rise from an ill-organized, irregular body of 'humble petitioners' to the sovereign for a redress of grievances. to its present position of supreme and unlimited power forms the central thread in the English constitutional history. Once the Commons stammered and trembled and shook while they presented their petitions to the Crown. To-day the sovereign occupies the throne as a tenant-at-will of the Commons. It may abolish the monarchy, it may make or unmake dynasties. Legally there is nothing which the House of Commons is not competent to do, but in practice, this legal theory of the power of the Commons has been impaired by the virtual dictatorship of the Cabinet, more of which hereafter.

Composition. Representative Government in England expressed itself through a House of Commons elected for five years but subject to earlier dissolution. The House is composed of 615 members, of whom 528 represent England and Wales, 13 Northern Ireland and 74 represent Scottish constituencies. The present House of Commons was elected in November, 1935 and, according to the party alignments, is composed of :

Conservative	...	...	...	375
Liberal National	...	...	...	33
National Labour	...	...	...	7
National	...	...	...	5
Labour and Independent Labour			...	168
Liberal	...	...	...	19
Independent	...	...	...	7
Communist	...	...	...	1
Total			...	615

The rules of the House of Commons require the attendance of forty members to constitute a quorum for the transaction of business.

Franchise. For many centuries the House of Commons was chosen on a very limited franchise. But to-day it is elected by universal adult franchise which has been achieved by gradual stages.

To speak generally, the House of Commons, before 1832, represented a plutocratic oligarchy ; and by 1832 the old franchise qualifications had become out of date, with the result that a very limited number of persons were entitled to vote. For example, in Scotland, out of a population of more than two million in 1832, only about 3,000 persons were entitled to vote in county constituencies.

The first Reform Act of 1832 was passed after many years of agitation demanding extension of franchise. This Act gave vote to about half a million people belonging to the urban middle class. The Reform Act of 1867 created another million voters

belonging mostly to urban wage-earners. The Act of 1884 enfranchised the rural middle classes and increased the electorate by about two million voters. The Representation of People Act, 1918, added more than eight million voters, three-fourths of whom were women over thirty years of age. The last stage in the process was reached in 1928 when the age limit for women voters was reduced to twenty-one from thirty and the franchise for women was placed in all respects upon equal footing with that of men.

Present position. The present law is that a person of either sex is entitled to be registered as a voter in a constituency if he or she is a British subject of twenty-one years and does not suffer from any legal disability, and if he or she possesses one of the following qualifications :

1. residence in the constituency (or in a neighbouring constituency, as defined) for qualifying period ;
2. occupation of business premises of the annual value of at least £10 in the constituency for the qualifying period ;
3. being the husband or wife of such an occupier ;
4. graduates of universities can vote in the appropriate university constituency.

The period required both for residence and for occupation of business premises is three months up to and including 15th June in each year. Under the first head all that is required is mere residence, and it is not necessary to be the occupier or owner of the place of residence.

Persons or domestic servants living with their parents may therefore qualify by residence in the constituency for the required period. On the other hand, it is only the 'occupier' of business premises who is entitled to vote. The head of a firm, and perhaps the manager of a branch of a large firm can qualify, but clerks and other employees can not qualify. Joint occupation of a business premises is recognized as qualifying, but in such a case the annual value of the premises must not be less than the amount produced by multiplying £10 by the number of joint occupiers. For example, if there are four occupiers, the yearly value of the premises occupied must not be less than £40. A person qualified to vote can have two votes but no more. He has no vote by virtue of his residence qualifications above mentioned. He may have a second vote if he holds a degree (not honorary) from one of the British universities or if he occupies business premises in another district. The last named provision makes it possible for the city man residing in a suburban community to vote both where he sleeps and spends his week-ends and also in the town where his chief business interests lie.

Registration. But it is not enough to possess only legal qualifications to be entitled to vote. It is also necessary that one should have one's name enrolled in the voting list, or as it is said, registered. If a person's name is registered as a voter only

then he is entitled to vote. The register is made up by the local registration officer who is the assessor for the county or borough. If the registration officer refuses to admit the claim of a person to be registered as a voter, that person has a right of appeal to the Sheriff Court on any question of fact or law, and on a question of law from the Sheriff Court to a special Registration Court of Appeal composed of three judges of the Court of Session.

Disqualifications. Under the Representation of People Acts, 1918 and 1928, electors are allowed the widest freedom to choose those who should represent them, but certain persons are disqualified from voting for a member of the House of Commons.

The classes of persons who are legally prohibited from membership of the House are :

(1) Aliens ; (2) Minors, (sometimes the House has connived at a minor being a member of the House, *e.g.*, Fox was elected at the age of 19) ; (3) Lunatics ; (4) Bankrupts ; (5) Peers, (but an Irish peer who is not elected a representative peer may sit for any seat in Great Britain) ; (6) Clergymen of the Established Churches of England and Scotland and of the Roman Catholic Church ; (7) Persons under sentence for serious crimes and persons convicted of corrupt practices ; (8) Persons holding contracts with Government ; (9) judges of the Supreme Courts of Scotland and England and Sheriffs. In addition, the holders of most offices under the Crown, except political offices held by ministers, are excluded : for example, all civil servants are debarred. But a new bill clarifying the position of members of Parliament who accept offices of profit while retaining their seats in Parliament has been passed on March 6, 1941.

Method of Election. The first step in the election procedure is the nomination of the candidates. The method is very simple. All that is required by law is that each candidate, shall, on a given date, file with the proper official (Returning Officer) a nomination paper declaring his candidature and mentioning his name, residence and profession or business, and signed by ten qualified voters of the constituency. One of these is called the proposer and another seconder, and the others agree to the nomination. But the law does not limit the number of signatures to ten, and often nomination papers are signed by scores or even hundreds of voters to show the popularity of the candidate.

Parliamentary Elections. The candidate while lodging his nomination paper must also deposit £150. This is intended to discourage frivolous candidates, as the amount is forfeited by a candidate who fails to secure one-eighth of the votes polled. Otherwise the amount is returned to him after the election.

According to the Act of 1918, at a general election the poll in every constituency now takes place on the same day. The eighth day after the proclamation summoning a new Parliament is the nomination day, and on that day every candidate must

lodge with the Returning Officer of the constituency his nomination paper duly completed. In a by-election that date must be within nine days in a county, in seven days in a borough, from the receipt by the Returning Officer of the writ. Polling falls on the ninth day when election is contested, from sixth to the eighth in the case of by-election. The hours of polling, the places for which are arranged by the local authorities, are fixed by Acts of 1885 and 1913 at 8 A. M. to 8 P. M., but may be extended to begin at 7 A.M. and close at 9 P. M., on the request of a candidate. In certain cases voting by post and proxy is also allowed. In the case of Scottish Universities voting is by papers supplied by the University and returned by post to the Returning Officer (Vice Chancellor of Edinburgh University). In England voters may vote in person or deliver or send paper by post to the appropriate Vice-Chancellor. The voting is by secret ballot.

Problem of Redistribution. The series of Reforms Acts which started in 1832, besides extending the franchise, attempted to make the constituencies approximately equal in size. Prior to 1832 there were great variations in the size of electoral districts ; for example, Birmingham, Manchester each with a population of about fifty thousand had no representation whatever.

On the other hand some boroughs with ridiculously small populations or with no settled population at all were entitled to representation. Bosseney, in Cornwall, was a hamlet of three cottages, eight of whose nine electors belonged to a single family ; but Bosseney sent two members to the House of Commons. In 1832 Edinburgh with a population of 160,000 returned one member to the House. The Act of 1832 and the subsequent Reform Acts have endeavoured to remove such unregularities, and to arrange constituencies from time to time to equalise the number of voters in each constituency, so that a vote shall have the same value wherever it is cast. The 1918 Act takes 70,000 voters as standard number of a constituency ; and constituencies, so far as possible, are so arranged that they shall have the above mentioned number of voters ; but there can not be exactness in such cases, because the constituencies are 'designed to be homogeneous units, bound together by geographical or other ties and not merely to be numerically equal groups of unrelated individuals.'

Criticism of the Electoral System. The electoral system in England is often criticised on the ground that it allows great discrepancies between the proportion of votes polled for a party in the country, and the proportion of seats obtained by the party in the House of Commons. For example, in 1922 the Conservative Party polled only 38 per cent. of the votes cast in the country but won about 344 seats and therefore a majority. In 1929 the Conservatives again polled 38 per cent. of the votes, but obtained only 260 seats and did not get a majority. In 1931 the Conservative Party should have had less than 270 seats in place of 473, the Liberal 110 instead of 68. From the above the critic concludes that the British method of election is unjust, unsatisfactory and dangerous in the highest degree. The injustices

and absurdities of the system have long been apparent, and various methods operating in other countries have been advocated for adoption in England. But the question is not taken very seriously by the two largest parties in England *viz.* the Conservatives and the Labour, each of whom believes that it may be to their advantage if they leave matters as they are. Both parties assume the disappearance of the Liberal Party soon and each believes that it will be its successor.

Methods of Reform. The capricious character of the polls is not doubted by any one. Various suggestions have been made from time to time for improving the system of election. It has been suggested that some form of proportional representation should be introduced. It is said that any form of proportional representation would aim at giving to each political party that number of seats in the House of Commons which is proportional to the number of votes cast in its favour at the time of election. The representation of the People Act of 1918 provided that the transferable vote system of proportional representation should apply to university constituencies when there are two or more members to be elected. The Transferable Vote means a vote which indicates the voter's order of preference for the candidates by numbering them 1, 2, 3, 4, 5, etc. According to this method, if the candidate of his first choice did not need his vote or was hopelessly running short, the vote would be transferred to his second choice, and if required to his third preference and so on. Thus in no case under this system his vote would be wasted ; it would always be utilised to return somebody to the House. It is held that such a system ensures that every one counts Some complexities may arise in the counting of votes, but this does not effect the election Thesystem requires the fixing of quota of votes to elect a candidate. Given the number of votes and the number of seats this can be easily done. But it also requires the grouping of the existing single-member constituencies into larger constituencies with a minimum of three or maximum of seven members.

But one of the arguments against proportional representation is that larger constituencies would make contact difficult if not impossible in the present-day conditions of life between electors and candidates. In absence of such a contact the electors would be inclined more and more to vote blindly in support of a party rather than a candidate. But the most effective argument against the system of proportional representation is that it would facilitate the representation of minorities which would lead to the formation of numerous small groups or parties in the House of Commons. This has happened in France, in the post-war republican Germany and in Spain. When there exist numerous parliamentary groups, governments tend to be short-lived and unstable because they have to depend upon bargaining to win the support of several groups. In England this is considered less satisfactom and not a good substitute for the existing Btitish system of comparatively long-lived governments which normally rely upon the support of one large party for the whole duration of a parliament.

Contested Elections. In the case of contested elections, if the question at issue is one concerning the legal eligibility of the candidate who has been declared elected, the House of Commons decides the question itself. But majority of contested cases involve charges of corruption and illegal practices in connection with the election. These are not decided by the House which, since 1868, has referred all such cases to the regular courts, where they are handled just as other cases would be handled. After the taking of testimony, the two judges constituting the court report their decision to the House of Commons in the form of a recommendation. Legally the House may accept or reject their decision. Actually the House always accepts the decision of the court which is then formally embodied in the official records as the judgment of the House itself.

Terminating Membership. There has been a rule from very early times in both England and Scotland that no person having been elected a member of Parliament may resign his seat. The existence of such a rule had two reasons : travelling was difficult and slow and membership of the House was regarded more as a burden than as a privilege as it involved long absence from home or business. The conditions have changed but the rule exists even to-day. The only way, therefore, in which a member of the House of Commons can cease to be a member is to accept an office which disqualifies its holder from the membership of the House. Two such offices exist which are simply used to facilitate members of the Commons to resign. These offices do not involve actual duties and are sinecures ; they are the stewardship of the Chiltern Hundreds and the stewardship of the Manor of Northstead. A member who wishes to resign his seat in the House of Commons makes a request to be appointed to one of these offices and this request is invariably granted by the Crown, thus he automatically ceases to be a member of the House of Commons.

Payment of Members. The system of payment to the members of the House of Commons existed in England till about 1680. The payment was made on the basis of per diem. With the passage of time attendance in Parliament came to be regarded as an honour rather than a burden and it was undertaken voluntarily until 1911. In 1911, partly due to the increased number of Labour members, majority of whom did not have any private means, a system of regular salaries for members was introduced. The salary was £400 a year at first but under the Ministers of the Crown Act, 1937 it is now £600. The Leader of the Opposition is paid an annual salary of £200. In addition, members have the privilege of free railway travel between London and their constituencies to enable them to maintain contact with their constituencies without taxing their pockets heavily on account of constant travelling to and from their constituencies on public business. The system of payment enables even poor persons to serve their country.

Officers and Privileges of the House of Commons. The principal officers of the House of Commons are the Speaker ; the Clerk and his two Assistants ; the Serjeant-at-Arms and his

Deputies ; the Chaplain ; the Chairman and the Deputy Chairman of Ways and Means. But the most essential officer of the House is the **Speaker.**

The Speaker. The need for this officer arose while the House of Commons was merely a petitioning body and required a recognised spokesman. Immediately after a new Parliament is formed, the members are desired, when they meet at the bar of the House of Lords to elect a Speaker, and then they return to the House of Commons to do so. If there is only one nomination there is no division and the candidate is elected unanimously ; if there are more than one, they are voted on successively ; a candidate getting a simple majority is declared to be elected. The Speaker is selected by the Premier in consultation with the Cabinet and the leader or leaders of opposition party or parties. In theory the approval of the King is necessary, but such approval is never withheld. The Speaker who served in the preceding Parliament is by custom always re-elected even if the ministry has changed. It is also the usage that if the late Speaker seeks re-election to the House of Commons, he should be elected unopposed. This usage is observed in view of the fact that his impartiality and detachment from all political parties precludes him from indulging in election propaganda. But occasionally this rule has been broken. It had last been ignored in 1833 and 1835, on the second occasion the Speaker being defeated ; but this happened before the doctrine of strict impartiality came into operation fully. But the usage with regard to the unopposed selection of the Speaker was once again put under strain in 1935. In the 1935 election the local Labour Party at Daventry took the view that the system of unopposed election of the Speaker meant that the constituency was virtually disfranchised for the period when it was represented by the Speaker, since due to his office he can not interest himself in the special needs of the constituency, which an ordinary member can do. The Labour leaders made efforts to avoid a contest but failed and the seat was contested unsuccessfully. The Liberals co-operated with the Conservatives to preserve the usage of automatic re-election. Numerous suggestions were made to avoid the anomaly. It was suggested that the constituency should be allowed a supplementary member, but the matter was left over for consideration before the election normally due in 1939. A Select Committee was appointed which did not favour any action ; and none is likely now.

Functions. The functions of the Speaker are regulated partly by custom, partly by rules of the House of Commons and in part by general legislation. These functions are not only numerous but important as well.

Many qualities are needed in the Speaker. He must possess tact and sufficient alertness to detect and check any disorder during hours of debates and speeches. The most important qualities needed are decision and impartiality. It is also necesssary that he should possess a knowledge of the rules.

Impartiality is not a universally acknowledged rule ; there are parliaments where it is almost a rule that a presiding officer

shall not be impartial. Both partiality and impartiality have something themselves, but adoption of partiality in the Speaker as a rule in any legislature may lead to useless wate of time, to disorder, and indecency in debate. It may lower the dignity of the presiding officer by bringing him down to the level of an ordinary member and both may indulge in arguments to win the votes in the House. The British Parliament has been successfully able to establish conditions of impartiality better than any other parliament.

The qualities required of a Speaker, and mentioned above, should not mislead us. They are not really very high. The prestige of the office is so great, all the parties are so careful to maintain his independence and impartiality, that any common but responsible man can make a success of the office. According to Lord Rosebery, 'There is much exaggeration about the attainments requisite for a Speaker. All speakers are highly successful, all speakers are deeply regretted, and are generally announced to be irreplaceable. But a speaker is soon found, and almost invariably, among the mediocritics of the House."[1]

Once a Speaker is appointed, he gives up his party character, resigns from his party, has no communication of a partisan character, can not even join a political club and is not supposed to have any political opinion of his own. Thus often a person who is elected Speaker is one 'who knows nothing and whom no body knows,' which means that the Speaker is often an obscure backbencher. And as often happens in most British institutions his authority is greater than his power. The House is always careful to maintain and enhance his prestige. He is paid £5,000 a year.

The powers of Speakership issue from tradition, ceremony, and the possession of present-day rights by practice, rule and statute as noted before. His functions are important and numerous :

(1) He presides at the meetings of the House of Commons.

(2) He is the spokesman of the House of Commons in its collective capacity.

(3) He is the guardian of the dignity and privileges of the members as well as those of the House ;

(4) He decides points of order, puts questions and announces the result of votes.

(5) He declares and interprets the law regulating the procedure in the House of Commons. He does not claim power to make or change that law but merely to be its exponent.

(6) He speaks the least. For centuries he has been denied the right to speak and vote in the proceedings of the House.

(7) He has a casting vote but the occasions when he can use

1. Lord Rosebery to the Queen: Letters of Queen Victoria, 3rd series, p. 495.

it are rare and practice has defined even the use of this casting vote. He votes for the *status quo.*

(8) He regulates the order of speech. His ruling is final though a vote of censure may be moved afterwards.

(9) His other functions are the selection of amendments, the certification of money bills and in regard to closure.

It is necessary to observe here that these functions of the Speaker impose an enormous burden upon him. The performing of these functions become more harassing with the impassioning of class conflicts, the break up of ancient parties and traditions. No doubt the Speaker possesses strong punitive powers but it is no pleasure to any speaker to exercise them frequently. It is not possible for any speaker to offer more impartiality to the House than the House allows. When party warfare becomes keen and sharpened neutrals will also come under fire and there are already signs of danger, but so far the system has worked well and has served to soothe asperities.

Voting and Divisions in the House of Commons. The method of voting in the House of Commons is that the Speaker first calls for the 'ayes' (yes) and 'noes,' and these are given orally. If the Speaker's announcement of the result is questioned a 'division' is ordered. For full two minutes bells are rung throughout the building, thus conveying to members within hearing that a vote is about to be taken, and the party whips rush about to rope in as many members of their respective parties as possible. Then the Speaker appoints 'Tellers' to count the members as they vote. If the ministry regards the vote as a test of their strength in the House, two whips from the Government are appointed tellers, and the Opposition is represented by their two whips. Otherwise tellers are appointed from among those members who have taken prominent part in the debate upon the bill. When the two minutes are over another oral vote is called for by the Speaker. He announces the result but his announcement is certain to be challenged, whereupon members are ordered to the lobbies. The lobbies are two rooms on each side of the hall of the Commons. Those who are in support of the bill go into the lobby on the Speaker's right, while the opposition goes into the one on the Speaker's left. As the members pass out from these lobbies back to the hall their votes are recorded by the tellers. This takes about ten minutes.

Privileges of the House of Commons. The House enjoys certain privileges, the chief purpose of which is to maintain the dignity and independence of the House and to protect members from outside interference. The privileges of the modern parliament have been inherited from the pre-Union English Parliament. The privileges of the House may be divided under two heads:

(A). Those demanded of the Crown by the Speaker at the beginning of each Parliament and granted as a matter of course; and

(B). Those not claimed by the speaker.

(A) *Those claimed by the Speaker are :*

(1) Members enjoy complete freedom from arrest. The members enjoy this privilege during and for forty days before and after a session of Parliament. The privilege does not extend to treason, felony, breach of the peace, seditious libel and criminal contempt of court, nor does it extend to protect the servants or property of members. Members cannot be compelled to attend as witness in any court. (This privilege is now generally waived in practice.) Under the Juries Act of 187[illegible] the members of the House are exempt from serving on a jury ; but that act does not apply to Scotland where the privilege, if it exists, depends on common law.

(2) Freedom of speech within the House. No criminal or civil action can be brought against a member for any words he may use in Parliament, however defamatory or illegal they may be. If members use objectionable language in any House of Parliament they may be penalized by the House itself but not by Law Courts. It must be remembered that the privilege applies only to words spoken by a member inside Parliament and not to words spoken outside.

(3) Right of access to the Crown through the Speaker. This is a collective right and not an individual one as in the case of members of the House of Lords.

(4) Right of having the most favourable construction put on the proceedings of the House.

(B) *Those not claimed by the Speaker :*

(1) Right to regulate its own constitution ; *e.g.*, to determine questions as to the legal qualifications of its own members, etc

(2) Right to regulate its proceedings. This was settled in the case of Bradlaugh *v.* Gosselt.[1] The plaintiff was duly elected a member of the House, but being an atheist he was not allowed to take the necessary oath by the speaker; and the House, by a resolution, directed the defendant who was the Serjeant-at-Arms, to exclude him from the House until he shall engage not to disturb the proceedings of the House. The plaintiff thereupon brought an action to declare the order of the House void as being beyond its power and jurisdiction and to restrain the Serjeant-at-Arms from executing it. The defendant demurred that there was no cause of action and the court allowed the demurrer, holding that 'the House of Commons has the exclusive power of interpreting a statute (in this instance, the Oaths Act by not allowing the plaintiff to take the oath) so far as the regulation of its own proceedings *within its own walls* is concerned ; and even if that interpretation be erroneous the Court has no power to interfere with it directly or indirectly'.[1]

1. Bradlaugh v. Gosselt, 1884, 12, Q. B. D., 271.

The latest case (1935) on this subject is *The King* v. *Campbell and others* (*ex-parte* Herbert). In this case an application was made for a summons to be issued against the Kitchen Committee of the House of Commons for selling wine without a licence. The Court held 'that in the sale of liquor within the precincts of the House of Commons without a licence, the House was acting through its Kitchen Committee.....in a matter which fell within the scope of the internal affairs of the House and therefore within the privileges of the House so that no Court of law had jurisdiction to interfere'.[1]

(3) The House has the right to exclude strangers. In the 18th century it was mainly used to prevent reports being made to outsiders and especially to the King, of speeches made in the House. In modern times the right is exercised only on exceptional occasions, as for example in 1920 and 1921 when the Strangers' and Ladies' galleries were closed for some months owing to fear of disorder while the Irish Home Rule question was under consideration.

(4) The House has the right to prohibit the publication of reports of its debates or other proceedings. The reports published in almost every newspaper are published only on sufferance.

(5) Lastly the House possesses the right to defend its privileges and its dignity by punishing those, whether members of the House or not, who commit a breach of its privileges or who are guilty of contempt of the House. The punishment may take the form of reprimand by the Speaker or in the case of an offender who is a member of the House, suspension or even expulsion from the House. If a member is expelled he vacates his seat but as the House by itself cannot create new legal disqualifications for membership, there is nothing to prevent him being immediately re-elected. In more serious cases the House has the right to commit the offender to prison, but it can do so only until the end of its session, and, unlike the Lords, it cannot commit for a definite term, unless the whole term falls within the session.

It must be pointed out that these privileges are rights conferred by law, and their limits and extent may therefore be determined by the Courts of Law. A mere assertion made by the House that it has a certain privilege or that a particular matter comes within the domain of privilege, will not be accepted by a court as conclusive. But once the court has satisfied itself that a matter is within the privileges of the House it will not interfere.

TOPICS AND QUESTIONS.

1. Discuss the method of election to the House of Commons.

1. 1935, 1. K. B. 594

2. What are the defects of the English electoral system to the House of Commons?

3. Write a short essay on the Speaker of the House of Commons.

4. What are the qualifications required for a person to be a voter, for parlimentary elections?

5. Discuss some of the privileges enjoyed by the House of Commons.

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CHAPTER 7

THE HOUSE OF LORDS.

Composition. The House of Lords in England is composed of five classes of members, *viz.*: (1) Hereditary peers of United Kingdom and of England who are also hereditary Lords of Parliament; (2) Representative peers of Ireland; (3) Representative peers of Scotland; (4) Spiritual peers: this class consists of twenty-six 'spiritual peers'—the Archbishops of Canterbury and York, the Bishops of London, Winchester and Durham ex-officio and the twenty-one other bishops of the Church of England in order of consecration. They are members of the House of Lords only so long as they remain in office as bishops; (5) Seven Lords of Appeal in Ordinary; they hold peerages for life and remain members of the House of Lords for life even when they have resigned office as Lords of Appeal.

It must be made clear that the hereditary peerage and the membership of the House of Lords do not mean the same thing. There are hereditary peers but they are not members of the House of Lords—Scottish and Irish peers who are not elected as representative peers—and there are members of the House of Lords who are not hereditary peers—bishops and law lords.

The Irish and Scottish representative peers became members of the Lords at the union of Great Britain and Ireland in 1801; and of Scotland and England in 1707 respectively. Irish representative peers who are twenty-eight in number are elected for life. When the Irish Free State came into being the practice of electing representative peers was not formally abolished, but the office of the Lord Chancellor of Ireland—the only person who could order an election of representative peers—was abolished; no more elections have taken place since the creation of the Irish Free State. The existing Irish representative peers are dying out and are not being replaced by others. In November, 1936 there were already twelve vacancies.

The Scottish representative peers are elected only for the duration of each parliament. Under the Act of Union, 1707, all holders of peerages of Scotland which existed at that time have the right to elect sixteen of their number to represent them in the House of Lords. An Act passed in 1847 modified the franchise by laying down that peerages in respect of which no vote had been cast since 1800 should lose the right to vote in future, unless and until the Lords directed to the contrary[1].

The House of Lord is at present composed of 785 members. The party alignment in the House of Lords is not definitely fixed. The composition of the House by parties is as under:

1. Conservative 519

1. Fraser. Op. cit., p. 43.

2.	Liberal	... 55
3.	Liberal National	... 11
4.	Labour	... 13
5.	National Labour	... 7
6.	National	... 5
7.	Independent	... 10
8.	Politics not stated, including Archbishops and Bishops ...	... 141
9.	Minors (not seated) ...	... 24
	Total	... 785

Out of this number the Irish peers elect 28 of their number for life ; those of Scotland 16 for the term of each parliament. Seven Lords of Appeal and 26 bishops sit for life. The remainder are members of the House by virtue of peerage only, the large majority having inherited their titles. The consequence of this method of constituting the House of Lords can best be understood by considering some figures of attendance and the legislative record of the second chamber of the British Parliament.

"Out of the total membership of 785, an average of 650 are absent every day[1]. In 1932 and 1933, 287 lords never attended the House. Between 1919 and 1931, 111 peers never voted, and more than half never participated in a debate. Again during the whole period of 1919 to 1931 only 98 lords spoke on an average more than once a year, and these were mostly ministers and ex-ministers. Defence of possession and property have always been the basis of the House of Lords. It is still predominantly represented in it as we find that there were 246 landowners in 1931, while 67 were bank directors, 64 directors of railway companies, 49 directors of engineering works and 112 directors of insurance companies. In 1922, 227 peers owned a known acreage of 7,362,000 or an average of 32,400 acres each. There were then 425 directorates held by 272 Lords representing 761 companies[1]. Only three members are required to form a quorum in the House of Lords but no bill may pass unless at least thirty members are present."

The House of Lords was once described by John Stuart Mill as a very irritating kind of minor nuisance. This view of the House of Lords was held by Radicals and even by Liberals long before the House had developed its technique of obstructing legislation not suited to the interests of classes represented in the House. It is said that the Lords brought the country almost to the verge of revolution in 1832 by their tactics of obstruction. A body which could do this could not be regarded as of small importance. But the reform party won in the end thus establishing a precedent of the more importance of the Commons.

1. Greaves. Op. cit., p. 53
2. Labour and Capital in Parliament, 1923,

It is further maintained that the Anglo-Irish relations have been embittered by the activities of the Lords. It is believed that if the British Constitution had been purely representative Irish home rule would have come thirty years earlier than it did. Examples can be quoted without number to show that the House of Lords has waged a consistent fight for the interests of the wealthy. Even the Parliament Act of 1911 leaves a good deal of power (suspensory veto for two years) with the House of Lords.

Creation of Peers. All lords owe their peerages originally to royal appointment. But those created since the rise of the cabinet government have been the work of the premier and cabinet, acting in the name of the sovereign, after consultation with personal and political friends. A number of factors enter into the selection of persons on whom peerage is to be conferred; only a few can be mentioned here. It is an established practice to offer a peerage to the Speaker of the House of Commons on his retirement; and also to ministers of long and distinguished public service. Military and naval officers who have distinguished themselves by any conspicuous service to the state are also similarly honoured; men who have made notable contribution to literature, science and art, and also business magnates and philanthropists are often created peers. Persons who have generously contributed to the party fund are also considered. Every party while in office utilises the opportunity to create peers to strengthen itself in the House of Lords.

There is no limit to the number of peers that may be created and the Government of the day is, therefore, able to ensure that the House of Lords shall pass any bill, because it can advise the King to create enough peers favourable to the bill to give majority to the Government in the House of Lords. The passing of the Parliament Act of 1911 has somewhat restricted the use of this threat since the House of Lords now only can delay and not kill any measure which the House of Commons is determined to pass.

Although there are no limits to the creation of peers by the King, there are certain restrictions on his right of creation. Since the Act of Union no new peers of Scotland may be created. New peerages are now always peerages of the United Kingdom. New Irish peerages may by the Treaty of Union with Ireland be created within certain limits, but it is not now the practice to create Irish peers. The restriction which is of practical importance is that apart from the statutory exception of the Lords of Appeal in Ordinary, the King cannot create life peerages; or, to be more accurate, the King may perhaps create life peerages but the holder of such a peerage is not entitled to take his seat or vote in the House of Lords.

Disqualifications. All duly qualified peers are entitled to be summoned to, and to sit, in the House of Lords, but there are certain disqualifications which prevent peers who would otherwise be entitled to sit in the Lords from doing so. For example, peers who are aliens or bankrupts, or are under sentence for any

serious crime may not sit in the House of Lords. Minor Peers (below twenty-one) may not sit nor may women who are peeresses in their own right.

Privileges and Disabilities of the House of Lords. The members of the House of Lords have certain privileges and are under certain disabilities. Most of these privileges are similar to those of the Commons, but there are some privileges which are enjoyed by the members of the House of Lords only. A peer is not amenable to the ordinary courts. If he is charged with felony or treason he can demand trial by his peers, which simply means by the members of the House of Lords. But if it is only a misdemeanor, he may be tried in the ordinary courts. Very rarely the House of Lords has been called upon to sit as a court of trial for one of its members. The only important disabilities are those which deprive peers of the right to vote at parliamentary elections and of the right to be elected to the House of Commons (the exception being Irish peers who are not elected to the Lords).

It has a right to see to its constitution which involves the right to consider the validity of newly-created titles. This work is done by a committee (Committee of Privileges) set up by the House and composed of the members of the House. Claims to old peerages are made in the first instance to the Crown, but if there is any doubt whether they should be granted, they are referred to the Committee of Privileges.

The Lord Chancellor. The President of the House of Lords is known as the Lord Chancellor. Thus he is the speaker of the House of Lords. He is always included in the Cabinet; his office is unique, even curious. He combines in himself legislative, executive and judicial functions. The seat which the Lord Chancellor occupies while presiding at the meetings of the House of Lords is called the Woolsack. He has vote; he is the custodian of the great seal of the Realm. He is the communicating channel between the Parliament and the King. Under the provisions of the Judicature Act 1925, he as Lord Chancellor, controls the organization of courts. He is also the head of the judiciary in England, and as such, is responsible for the appointment of the High Court Judges and Assize Commissioner. In addition to these he is a member, as well as the Presiding Judge of the High Court of Justice; he is also one of the Judges of the Supreme Court. When the House of Lords sits as the highest court of appeal the Lord Chancellor presides over its deliberations; he is also a member of the Judicial Committee of the Privy Council. Government measures are often entrusted to him for their passage in the Lords He has some ecclesiastical patronage as well in his gift; he has no definite department, though he has certain departmental functions.

Method of Voting. Most important questions are decided by a division and the manner of voting is in effect the same as in the House of Commons. But no division can take place unless thirty members are present.

Powers of the House of Lords. Before the passing of the Parliament Act, 1911, the House of Lords had in law exactly as

much power as the House of Commons. The consent of both Houses was essential before any bill could receive the Royal Assent and become an Act of Parliament.

In matters of finance there was a convention that the House of Lords should not amend a money bill, though it could reject it *in toto*. This convention dated from 1617 when the House of Commons passed a resolution that when they (the Commons) granted supplies to the King the rate of taxation should not be altered by the House of Lords. Side by side there also existed a vague convention that if there was a conflict between the two Houses, the House of Lords would give way if the House of Commons appeared to have public opinion behind it.

Rivalry between the Commons and Lords. Until the Liberal Party came into power in 1906 conflicts between the House of Lords and the House of Commons were not frequent. Between 1906 and 1909 the House of Lords with a Conservative majority, rejected several important measures which had been passed by the House of Commons with a Liberal majority. The crucial point was reached in 1909 when the House of Lords rejected the Finance Bill embodying the famous Lloyd George Budget.

In January 1910 a general election was held at which the Government was returned with a majority in the House of Commons which showed that the electorate approved the Budget and was behind the Liberal Party in the House of Commons The House of Lords was left no other choice but to pass the previously rejected Finance Bill. But the House of Commons, was not satisfied. Thev considered prevention better than cure and did not wish that the House of Lords should be able to repeat its conduct. At this time the Government majority in the House of Commons consisted partly of the Irish Nationalist Party who knew that the House of Lords would refuse to pass the Irish Home Rule Bill. The Irish Nationalists in the Commons pressed the Government and demanded a permanent limitation of the powers of the House of Lords. Under the pressure of the Nationalist Party the Government were obliged to introduce the Parliament Bill.

Parliament Act, 1911. This bill was passed by the House of Commons, but it was bitterly opposed by the House of Lords with a Conservative majority. A very serious conflict arose between the two Houses. A conference of party leaders was held after the death of King Edward VII, but it failed to find any solution. To resolve the deadlock a general election was held in December 1910. The Government after being returned to office as a result of the general election publicly announced that the King has agreed to swamp the House of Lords, that is, if the House of Lords refused to pass the bill, the King would be advised to create a sufficient number of Liberal peers to enable the passing of the bill in the Lords with a majority. This would have meant the creation of several hundred peers; in the face of this threat, the House of Lords gave way and passed the bill which is known as the Parliament Act, 1911.

Provisions of the Parliament Act, 1911. The main importance of the Parliament Act, 1911, lies in the fact that it provides that in two sets of circumstances legislation may be passed by the King and the House of Commons, without requiring the assent of the House of Lords.

Firstly in the matter of a money bill. If a money bill is sent up to the House of Lords at least one month before the end of the session and is not passed by the House of Lords within one month, then unless the House of Commons directs to the contrary, such bill is to be presented to the Crown and becomes an Act of Parliament on receiving the royal assent.

Secondly, if any public bill other than a money bill is passed by the House of Commons in three successive sessions and is sent up to the Lords at least one month before the end of each session, is rejected by the Lords in each of these sessions, then the bill is to be presented to the Crown for royal assent on receiving which it becomes an Act of Parliament, provided that two years have passed between the date of second reading in the House of Commons in the first session, and the date on which it passes the Commons in the third session.

Thirdly, the Act fixes the maximum life of a Parliament at five years.

Further the Act defines a money bill which means a bill containing only provisions dealing with taxation or appropriation or other financial matters. It must be certified as a money bill by the Speaker of the House of Commons in order that the provisions of the Parliament Act, 1911 shall apply to it. The certificate of the Speaker is final and may not be challenged in any court of law.

Importance of the Act. The Parliament Act of 1911 aroused intense opposition at the time when it was passed. It was even called a semi-revolutionary attempt to break down the British constitution. It has destroyed the balance of power by relegating the House of Lords to a subordinate position in matters of legislation. But its provisions with regard to non-money bills have only twice been used, once for the Welsh Church Disestablishment Act, 1914, and once when they were applied to the Government of Ireland Act, 1914 which never came into effect.

The Act forms one of the most important statutory portions of the British constitution. It lays down the maximum period for the duration of a deadlock between the House of Commons and the House of Lords. It defines the extent to which the House of Lords may carry their opposition to the House of Commons in matters of legislation. It also prevents the House of Commons from hurrying through legislation by vesting the Lords with the power to delay ordinary public bills for two years. Its provisions do not apply to a bill intended to prolong the life of Parliament which means that the consent of the House

of Lords cannot be dispensed with in the case of such a bill. Thus the Act lays down the conduct of each of the Houses of British legislature and that of the Crown in a given set of circumstances, definitely prescribing the line of action to be adopted by each of them. For this reason some writers think that after the passing of the Parliament Act of 1911 the English constitution has become a partially written one. Their arguments may be summed up as under.

(1) The working of the constitution except those usages, conventions and practices which are not written, is carried on according to the numerous Parliament statutes—Habeas Corpus Acts, Act of Settlement, Bill of Rights to mention a few—which may be said to give the British constitution a written character.

(2) But none of these statutes laid down the powers of the three most important organs in relation to one another in the government *viz* :—the Crown, the Lords and the Commons. The Parliament Act fulfils the necessity and lays down specifically the conduct of each in matters of finance and ordinary legislation. That is to say, with the passing of the Parliament Act of 1911 the line of action to be adopted by the Lords, the Commons and the King is definitely known. The one characteristic of written constitutions is that they definitely lay down the course which the government in the conduct of its affairs has to take. The Parliament Act with previous parliamentary statutes, it is said, does the same and hence it is said that with the passing of the Parliamentary Act, 1911, the English constitution has become a partially written one. However, it must be pointed out that this view is not universally accepted, and is even contended.

End or Mend. It has been pointed out that the Parliament Act, 1911, has relegated the House of Lords to a position of inferiority. It was passed at a time of great political excitement, and was not intended to be more than a temporary measure to last until the powers and composition of the House of Lords could be reorganised in calmer moments. This is made clear in the preamble of the Act itself which runs : "Whereas it is intended to substitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of a hereditary basis but such substitution can not be immediately brought into operation ....." Therefore various proposals have been made, from time to time, to reform the House of Lords since the passing of the Parliament Act, 1911. The two most important of these plans are the Lansdowne Plan and the Bryce Plan.

The Lansdowne Plan. It recommended reduction in the membership of the House of Lords fixing it at about 330. According to the plan the House of Lords was to be constituted in the following manner :—

(*a*) One hundred members of the Lords to be chosen by all the peers :

(*b*) One hundred persons to be appointed by the Crown from the peers or non-peers ;

(*c*) The members of the House of Commons sitting in regional groups were to elect one hundred and twenty persons ;

(*d*) The bishops were to select five members from amongst themselves.

The Bryce Plan. The whole question of the composition and powers of a second chamber was considered by a committee presided over by Local Bryce in 1917—18 The committee could not arrive at a final agreement, and the scheme was marked by so many compromises that it was considered impracticable. The committee examined the essential functions of a second chamber as an indispensable preliminary to any proposals of its reconstruction and was agreed that among others the most essential functions of a second chamber are :

1. the examination and revision of Bills sent from the Commons, especially in view of the rules curtailing debate in that house ;
2. the initiation of Bills dealing with subjects of a practically non-controversial character, which might have an easier passage through the Commons if discussed and put in shape ;
3. the interposition of so much delay and no more in the passing of a Bill into law as to enable the opinion of the nation to be adequately expressed ;
4. free and full discussion of large and important questions, for example, those of foreign policy, at moments when the House of Commons could not find time for them.

In addition to the formation of the second chamber the Bryce Committee agreed at the outset that the hereditary peers should form only a minority of the second chamber, and that there should be no property qualifications. Proposals for selecting the majority of the chamber fell into four classes[1] ;

1. Direct election by large constituencies.
2. Method of nomination. It was to be adopted for a small portion only. Only persons of proved eminence and not connected with party politics were to be nominated.
3. Election by local authorities grouped together in geographical areas, as in France.
4. Election by the House of Commons.

In cases of deadlocks the Bryce Committee proposed the setting up of a joint conference consisting of thirty members from each chamber to which the matter in dispute was to be referred

The first plan was soon given up as it was not intended that the second chamber should be coeval with the lower house, and it was felt that a House of Lords elected directly would compete with the House of Commons.

1. Ivor Jennings. Parliament, (1939), pages 416—417.

The second plan was considered unpracticable because it was believed that persons eminent in other walks of life would not necessarily be good legislators and a nominated body of Lords, sooner than later, would become political supporters of the government in power.

The third plan was rejected on the ground that it would introduce irrelevant considerations into local elections and affairs. Another objection to this plan was from the side of the Liberal parties who held that Country Councils were almost wholly Conservative, and in any case an elected House of Lords would become a rival of the House of Commons which was undesirable.

The last proposal, *viz.*, the election by the House of Commons secured most approval. Its merits may be summed up as under :

1. It creates a second chamber which has no claim to be rival to the lower.
2. It saves the expense, labour and confusion of a second series of popular elections.
3. It will be elected on party lines and therefore will reflect the prevailing composition of the parties in the Lower House, and therefore may be used as a consolation for politicians who have been defeated in the elections to the Lower House, or have grown tired of it.

The House was to be directly elected by the House of Commons. To secure minority representation the Conference agreed that the election should be by proportional representation ; and to safeguard against manipulation by small groups it was agreed that Great Britain should be divided into thirteen areas, and that election should be made by the members of the House of Commons sitting for constituencies within each area.[1]

But the Conference failed to reach any agreement, and after its failure the Government introduced resolutions in the House in 1921, embodying their own proposal for the reorganization of the House. The resolutions said :

1. That this House shall be composed, in addition to peers of the Blood Royal, Lords spiritual, and Law Lords, of
   (*a*) Members elected, either directly or indirectly, from outside ;
   (*b*) Hereditary peers elected by their order ;
   (*c*) Members nominated by the Crown ;
   the numbers in each case to be determined by statute.
2. That, with the exception of peers of the blood royal and the Law Lords, every other member of the reconstituted and reduced House of Lords shall hold his seat for a term of years to be fixed by statute but shall be eligible for re-election.
3. That the reconstituted House of Lords shall consist approximately of 350 members.[2]

1. Ivor Jennings, Op. Cit., p. 418.
2. Jennings Op. cit., p. 418.

Labour Party and the House of Lords. In 1935 though the Labour Party was almost unrepresented in the House of Lords it became the official Opposition. With the advent of the Labour Government in 1924 the possibility of its having a majority did not remain remote. With this possibility it was already foreseen that no Labour Government would for long tolerate the hereditary privileges of the Conservative peers.

In 1927 the question of the reorganization of the House was raised again, and the tentative conclusions of the Government were announced by the Lord Chancellor. They may be summed up as under :

1. The question whether a bill is a Money Bill should be settled by a joint standing committee representing the two Houses, and composed of equal number of members from each House ; this committee should consider the form as well as the substance of the Bill.
2. A Bill intending to alter the powers and composition of the House of Lords should not be passed under the provisions of the Parliament Act, 1911.
3. The Crown to be vested with the power to add a limited number of members on the nomination of the Government ; such members to sit for twelve years and one-third to retire every four years.
4. A number of representative peers to be elected by the hereditary peers from amongst their own order, such peers to sit for twelve years each, one-third retiring every four years.
5. The House to consist of not more than 350 members, excluding peers of blood royal and Lords of Appeal,[1]

But nothing came out of this plan also.

Another proposal for the reconstruction of the House of Lords was put forward by Lord Clarendon in December 1928. This proposal accorded a permanent majority to the Conservative Party, but nothing came out of this proposal also.

In December, 1933 a Bill was introduced by Lord Salisbury to reform the House of Lords. His proposals were, briefly, as follows :

1. A more restrictive definition of 'Money Bill' which was to be interpreted by a Joint Select Committee of both Houses, with the Speaker as chairman.
2. Bills other than Money Bills should not be passed under the provisions of the Parliament Act until after a dissolution.
3. The peers were to elect 150 of their own order.
4. Another 150 to be added from outside. The method of their selection to be prescribed by resolution of both Houses of Parliament.

1. Jennings. Op. cit., pp. 419—420

5. The House to consist of 320 including the peers of blood royal, the Lords of Appeal, and a few bishops.

This Bill also got no further than the second reading.

Thus we find that none of the proposals for reform has received sufficient support to be acted upon and the arrangements made in 1911 continue in force.

Should the House of Lords be ended? : Arguments for the House. So far all efforts to reform the House of Lords have failed. Any proposal for reform must not lose sight of the fact that a hereditary or nominated chamber is not consistent with democratic theory, and cannot, for this reason, be allowed as much power as the House of Commons, secondly an elected second chamber can claim to be as fully representative of the people's will as the Lower House and hence entitled to equal power with the result that serious conflicts between the two might continue to occur.

The abolition of the House of Lords was adopted as one of the items in the official policy of the Labour Party at its Annual Conference in 1934 ; its National Executive Committee submitted to the Conference a report on 'Parliamentary Problems and Procedure,' which was approved by the Conference. J R. Clynes while moving the adoption of the report said : 'In our view the House of Lords is an institution which can not be well reformed : it can not be amended, it must be ended.'[1] But immediate abolition was considered 'unwise,' and the Labour Party manifesto issused on the eve of the last general election (1935) ended with the words : 'Labour seeks a mandate to carry out this programme by constitutional and democratic means, and with this end in view it seeks power to abolish the House of Lords and improve the procedure of the House of Commons.[2]

But this solution suggested by the Labour Party has never commanded general agreement in England. In that country it is still generally held that a second chamber should be maintained. The reasons are : firstly it performs a useful function by being a brake to delay legislation of a constitutional character thus allowing time to the people to form their opinion and express it.

Secondly it is of much usefulness since it performs the function of revising legislation carefully and in greater detail than is possible in the House of Commons because,

It must be pointed out that to-day this function is not of much importance. Legislation to-day is so technical that it is difficult for those who are not experts to make any useful suggestions or amendments.

Thirdly, the House of Lords is considered useful as a convenient place where politically non-controversial bills may be introduced thus affording some relief to the House of Commons.

1. Jennings. Op. cit., p. 423.
2. Ibid. p. 424.

Fourthly, it is maintained that the House of Lords consists of members who can express their view more freely and with greater independence than the members of the House of Commons can, because the members of the House of Lords have no constituents to satisfy and no election to fight.

Lastly, the greatest justification for the existence of the House of Lords in its present form is that it enables men of experience in all branches of affairs and knowledge to take part in public life and to exert an influence upon public affairs without undergoing the trial of an election. There may be many such persons who because of their age, eminence, expense or some other reasons may not like to fight an election to the House of Commons, but who may nevertheless, be able to contribute to the wisdom of Parliament and serve their country.

Arguments against. On the other hand it is maintained that there is no case for the House of Lords. It is claimed that the House of Lords in its present form ensures that one party and one section of the community shall govern, as Mr. Balfour once remarked it should, whether in opposition or in power. Such a position is undesirable. It means a negation of democracy.

Secondly, it is maintained that at present there is no need for a revising second Chamber, because the House of Commons itself has become a second chamber for purposes of legislation; the first is the Cabinet together with the Administration which consults interests concerned before Bills are prepared.

Thirdly, a committee of drafting experts and of lawyers is better for the work of revision than a large assembly like the House of Lords.

Fourthly, those persons who because of age, experience or other reasons do not wish to fight an election to the House of Commons and still desire to serve their country and contribute to public life may be co-opted as members of various committees instead of being appointed to the House of Lords.

QUESTIONS AND TOPICS

1. What is the position of the House of Lords as a legislative body after the passing of the Parliament Act, 1911?

2. Discuss the several proposals for reform of the House of Lords.

3. What in general, are the arguments advanced for and against bicameral and unicameral legislative bodies? What is the particular application of the arguments to England?

4. Discuss some of the more important provisions of the Parliament Act of 1911.

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CHAPTER 8.

THE WORKING OF PARLIAMENT.

Summoning and Dissolution. Parliament is summoned by means of writs sent out by the Lord Chancellor. The members of the House of Lords receive individual writs summoning them to attend on a prescribed date. (The exception to this rule is the Scottish Representative peers who are elected for each Parliament.) For summoning the House of Commons writs are sent to the returning officer in each constituency.

The new Parliament meets at Westminster on the day appointed by the Royal Proclamation and specified in the writs ; each House of Parliament meets in its own chamber. After a general election the first business of the House of Commons is to elect a Speaker. The Speaker is the Chairman of the House of Commons and presides over its debates.

After election, members of Parliament have to produce formal evidence of their title to sit Thereafter each new member of the House of Lords, and each member of the House of Commons must take an oath of allegiance or make a declaration in lieu which is allowed by the Oaths Act, 1888. The oath can be taken by a member of the House of Lords as soon as Parliament is opened, by a member of the House of Commons after the Speaker is elected. A member's salary is paid only from the time he takes the oath.

When the Speaker has been elected and the members have taken the oath the House is duly constituted and is ready to begin its work. The work of the Parliament is begun by the King's Speech. also called the Speech, from the Throne. The speech from the throne outlines the programme of legislation which the Government intend to bring before Parliament and briefly describes the general political outlook with particular reference to foreign affairs. A speech from the throne is made at the beginning of a new Parliament and also at the beginning of each session of an existing Parliament. The speech is personally delivered by the King in the House of Lords. Queen Victoria refused regularly to deliver the speech in person ; since Edward VII's reign it is always so delivered. Otherwise Commissioners are appointed to deliver the King's Speech.

The speech is read in the presence of the Commons who are called to the bar of the House of Lords. Immediately after the speech the Houses separate, and before the real business is begun, each House reads a formal bill to manifest its autonomy and its right to deal with matters other than those referred to in the King's Speech. When these formal bills have been read a first time each House proceeds to pass an Address to the King in reply to his speech, after which they are ready to proceed with regular business.

Adjournment. Parliament thus convened, remains in session until its working is stopped in one of the following ways :

1. It may be stopped by adjournment which is the procedure used when only a comparatively brief interruption of work is desired, or when it may be necessary to call the House of Commons and the Lords together at a short notice. The Houses adjourn at their own pleasure, but the Crown, if both Houses stand adjourned for more than fourteen days, may call upon them to meet by proclamation calling for a meeting not less than six days after the date thereof.[1] One House may adjourn while the other is in session. Adjournment may be for a few hours or overnight or for some days or weeks.

2. **Prorogation.** It is a more formal method. It is effected by the King or by a royal commission on his behalf. Prorogation terminates a session of Parliament and wipes out all pending business. All bills partly gone through have to be taken up anew at the new session. In this, prorogation is different from adjournment which only puts off business for a limited period.

3. **Dissolution.** A dissolution of Parliament brings the life of that Parliament to an end, thus necessitating a general election. It may be effected either by an exercise of royal prorogative, or by efflux of time If parliament were not dissolved by an exercise of the royal prerogative, as is the invariable practice except in the special circumstances of war, automatic dissolution would follow five years after it was summoned, as five years is the maximum period at which the life of a parliament is fixed by the Parliament Act of 1911.

Prorogation or adjournment is always for a definite period, but the King in both cases has statutory power to call Parliament to meet at an earlier date if necessary. The King can prolong the period of prorogation and can postpone the meeting of Parliament. But a dissolution is final and irrevocable except in a case when the king dies after one Parliament has been dissolved and before a new one has met, the old Parliament is automatically revived for a maximum period of six months.

BILLS AND THEIR PROCEDURE.

DIFFERENT KINDS OF BILLS.

1. **Public Bills.** A public bill is one which deals with measures affecting the general interest and concerns the whole people, or at any rate, a large portion of them. For example, a measure altering the franchise, or establishing a new administrative department or changing the tax-laws is a public bill.

1. Keith. The Constitution of England from Queen Victoria to George VI ; Vol. I. (1940), p. 331.

2. **Private Bills.** A private bill is a measure which deals with the interest of some individual or corporation or municipality. For example, a bill authorising the construction of a new railway line, or conferring on a municipality powers beyond those which it possesses by general law, is a private bill.

3. **Hybrid Bill.** A hybrid bill is really a measure which affects private interests but is brought in as a public bill.

4. **Provisional Order Bills.** These are measures which confirm orders and schemes made by public departments under statutory powers.

The most important, but not the only, function for which a legislature exists is law-making. While a proposed measure is before Parliament for consideration it is called a bill ; after it has passed through all the stages and has received the royal assent it becomes an Act of Parliament.

The procedure is different for public and private bills ; but in each House a bill has to follow almost exactly the same procedure in each case, therefore one description will suffice. The procedure with regard to public bills is discussed below.

Procedure in regard to Public Bills. All public bills other than money bills and bills dealing with the representation of the people, may originate in either House. But in practice most important bills, specially if they are of a controversial nature are introduced in the Commons first and are sent to the Lords only after they have passed through all the stages in the House of Commons. All money bills must originate in the House of Commons.

The different stages in the procedure of a public bill are :—

1. Either, (*a*) Motion for leave to introduce the bill which is either carried or negatived without debate.
   Or (*b*) After notice, presentation of the bill at the table without an order of the Hause.
2. The second stage is the first reading. This is only a formality and no discussion or amendment of the bill takes place at this stage ; only a question is put, " That the bill be now read a first time, and that the bill be printed," and a date is fixed for the second reading.
3. Next comes the second reading. It is considered to be the most important stage of the procedure. The bill is discussed for the first time in the House, but only the main principles and not the details of the bill are discussed. At the end of the debate the question is put " That the bill be now read a second time." Those who oppose the bill may do so either by moving an amendment " That the bill be read six months hence," or may propose an amendment opposing the bill. The intention of the first is to prevent the bill from being carried during that session. If the amendment is carried the bill is rejected.

4. If the bill has passed the second reading it means that it has been opposed in principle and has to be considered in greater detail. For this purpose it may be referred to a Committee of the Whole House. Therefore this stage is called the Committee Stage. In the committee stage a bill is considered clause by clause and amendments are made; it may be referred to one of the five standing committees of the House of Commons. Bills are usually sent to one of these standing committees, but if a bill is of special importance it may be referred to a select committee—a committee specially selected to deal with that particular bill. When either House goes into committee to form a committee of the whole House, the Speaker or the Lord Chancellor leaves the chair which is taken by the Chairman of Committees in the House of Lords and the Chairman of Ways and Means in the House of Commons. When either House goes into a committee the procedure becomes less formal and members may speake more than once on the same amendment. Only minor amendments are made in the committee, but it may happen that so many amendments are made that the bill is profoundly modified or the substance of the bill is lost.
5. When a bill has passed through the committee the fact is reported to the House and this is called the Report Stage. The bill is now considered in its amended form by the House and further minor amendments may be made.
6. The next stage is the third reading. At this stage only verbal amendments may be made in the House of Commons, though there is no such restriction in the House of Lords.
7. After passing through these stages in one House the bill is sent to the other House. This may be called the Sending on the Bill; and finally it is presented to the King for his assent.

Controversy over Bills. If a bill has been passed by one House and is amended by the other it is sent back to the House which first passed it to consider amendments made by the other House and if thought fit, to adopt them. In case of a conflict the House of Commons can always have its way in the end under the provisions of the Parliament Act, 1911. But it must be pointed out that very few serious disagreements have occurred between the two Houses since the Parliament Act was passed.

Disagreement would be rare when there is a Conservative majority in the House of Commons, but with Labour majority in the House the position would change and disagreements would be frequent and the whole question of the relations between the two Houses might be opened once again.

Methods of limiting Debate. It is necessary to curtail the discussion on bills in the House of Commons to avoid unnecessary

waste of time. There are various methods employed for this purpose, the simplest of which is the closure. Under this provision any member may move that "The question be now put" and this motion must be voted upon without discussion or mendment. If it is carried the debate comes to an immediate end. This procedure was first adopted in 1881 to counteract the deliberate obstructive tactics of the Irish Nationalist Party in the House of Commons.

The second form of closure is known as the 'guillotine.' Guillotine means fixing in advance a period for debate on the bill, at the end of which period the debate automatically comes to an end.

There is yet a third method of saving time which is known as 'Kangaroo' closure. This method allows the chairman at the committee stage, or the Speaker at the report stage to select the amendments to be discussed. The object of this method is to avoid having to discuss several amendments with the same purpose. The Chairman can select one amendment which raises each point and thus prevent useless repetition and wastage of time.

All these methods are objected to on the ground that they limit free discussion which Parliament exists to provide ; and when any of these methods is used it is generally criticised by the Opposition on this ground. The Standing Orders of the House also recognise the danger of the oppressive use of these methods. It is required by the Standing Orders that at least one hundred members must vote in favour of the closure before it be can be applied. Secondly the Chairman of the Committee or the Speaker as the case may be, is authorised to refuse to accept a motion that the question be now put if in his opinion it is an abuse of the rules of the House or that it would be an infringement of the rights of the minority.

Procedure in regard to Private Bills. The procedure which has been considered above is applicable to public bills only, that is, to legislation of general importance. Public bills whether introduced by a member of the Government or by a private member, are subject to the same procedure. But there is a separate class of legislation known as private legislation in which the procedure adopted is different from that applied to public legislation.

The procedure in regard to private bills is somewhat complicated by reason of their affecting private interests. As private legislation is promoted by individuals, or comparatively small groups of individuals, the procedure for passing such legislation includes a public enquiry by parliamentary Committees at which parties whose interesets are affected may raise objections to the proposed legislation. At such enquiries the parties for and against the proposed legislation are generally represented by counsel and the proceedings are similar to those in a court of law. Therefore the procedure in regard to private legislation may be said to be quasi-judicial. Under Standing Orders a petition and a copy of the Bill have to be lodged at the Private Bill Office and at the Treasury. With this exception the procedure in regard to private bills is broadly similar to the procedure described for psasing a public bill.

There is yet another kind of legislation known as Provision Order Procedure, The main practical differences between a private bill and a provincial order are that in the latter there is only one enquiry, held by four commissioners (two from each House) on behalf of Parliament, instead of two separate enquiries before a committee of each House. If the commissioners report in favour of the order, the Secretary of State may issue it as a provisional order, but it is still only provisional and does not come into effect until it is confirmed by an Act known as Provisional Order Confirmation Act Confirmation Acts are generally passed without opposition as it has been fully expressed at the enquiry stage. If they are unopposed they are deemed to have passed all their stages upto and including the committee stage, hence only the report and third reading stage have to be taken in each house of legislature.

Procedure in regard to Money Bills. The procedure described above relates to private bills and public bills other than money bills. Special rules govern the handling of financial measures which will be considered now.

The control of Parliament, or to be more accurate, of the House of Commons, over the public finances is exercised both over revenue and over expenditure.

Money (finance) bills have to do with appropriations for the running of the government in all its varied activities and aspects, and with the ways and means of raising the needed funds. The budget, as the government's plans for raising money and allocating it to differents department and services is called, is embodied in two sets of measures —one dealing with expenditure and the other with revenues. Both can originate only in the House of Commons, and the House of Lords can neither veto nor amend them but only assent to them. Since the Parliament Act, 1911, has come into force if the Lords do not assent to such bills, they are presented to the King over the head of the Lords for royal assent. Although such bills originate in the House of Commons, they can be introduced only on the recommendation of the Crown expressed through its responsible ministers. The practice is based on the principle that the Crown demands money and the Commons grant it, and the House of Lords assents to the grant ; but 'the Commons do not vote money, nor impose or augment taxes unless required by the Crown through its constitutional advisers.' Before a single penny of the public money can be spent the House of Commons has to determine three things :

(1) What grants are to be sanctioned and for what purposes ;
(2) From what source the money for the grants is to come ; and
(3) How the supplies granted are to be appropriated by the various departments.

The procedure for this is embodied in Standing Orders.

The following is the procedure in the House of Commons in regard to money bills :—

(1) A committee of the whole House—Committee of Supply

considers the estimates for the expenditure of the ensuing year, and votes the requisite grants of money.

(2) Then another committee of the whole House—the Committee of Ways and Means—passes resolutions that the sums of money voted be issued out from the Consolidated Fund. (All revenues of the state are paid into a single fund called the Consolidated Fund which is the Government account at the Bank of England.) This committee has another important function: If the committee thinks the Consolidated Fund to be inadequate to meet the requisite grants, it can pass resolutions that taxes, other than the permanent ones, be imposed.

(3) At the end of each financial year, two Acts are passed, *viz.*, the Appropriation Act which settles what sums are to be paid out of the Consolidated Fund to the various Departments; and Finance Act which embodies the resolutions of the Committee of Ways and Means in regard to taxation. As these Acts are passed at the end of the year, supplementary estimates are presented from time to time, if money is required in the meantime to carry on the administration: these are voted in the Committee of Supply (known as Votes on Account) provided for in the resolutions of the Committee of Ways and Means, embodied in Consolidated Fund Bills and passed as Consolidated Fund Acts and finally embodied in the Appropriation Act.

Money Bills and the Lords. The powers of the House of Lords in regard to money bills have been curtailed by the Parliament Act, 1911. Under the provisions of the Act if a money bill is sent up to the Lords at least one month before the end of the session, and is not passed by the Lords within one month, then unless the House of Commons directs otherwise, such bill is to be presented to the Crown, for the royal assent on receiving which it becomes an Act.

Committee system. For the more satisfactory consideration of bills introduced the rules of each house provide for a series of committees. These committees in recent years have formed a very important part of the legislative machinery. Normally bills are referred to these committees, but in special cases the House may vote otherwise. In the two Houses the committees are not very different. The committees are of various types. There are standing committees and select committees, and committee of the Whole House.

There are six standing committees, five in the House of Commons and one in the House of Lords. These committees are appointed at the opening of the session and continue until parliament is prorogued. Certain classes of bills are referred to these committees, each receiving bills falling within its particular province.

Select committees are appointed from time to time to investigate and report upon a new subject of legislation or upon the working of some existing law. These committees

go out of existence when their work is finished. The number of such committees is variable but never small.

Committee of the Whole House consists of all the members of the House proceeding under special rules. When the House goes into a Committee of the Whole House the Speaker leaves the chair which is occupied by a chairman and the regular rules of procedure are relaxed.

Members may be assigned to these various committees by the House itself (excepting committees of the Whole House). But in practice the assignment is made by a committee on committees, called the Committee of Selection. It is interesting to note that the Committee of Selection is also called a Sessional Committee, though it may easily be called a standing committee. It is made up anew at the opening of each session, and functions throughout the session. The Committee of Selection consists of eleven members in the House of Commons and nine members in the House of Lords, elected by their respective Houses. But this action of the Houses is only a formal ratification of a state agreed upon by the Premier and the Leader of the Opposition. It is a bi-partisan committee, and while appointing members to various committees it pays regard to give representation to various parties in proportion to their numerical strength in the House.

Each standing committee normally consists of forty to sixty members, each party is represented on the committee in proportion to its strength in the House. Select committees usually consist of fifteen members each, with the exception of select committees on private bills, which have only four members. The Cabinet is not officially taken as a Committee of the House of Commons, yet it is the most important parliamentary committee. It has the mastery of the time and the legislative programme of the House. The Cabinet may be called a steering committee. It originates and guides all legislation in the House.

Control Over Finance. An important feature of the English financial system is that Parliament does not only authorise the expenditure of a certain total amount but it allocates this total in detail under various heads, thus indicating the matter on which money is to be spent. The responsibility that funds thus voted by the Parliament are not spent for any other purpose is placed upon the Comptroller and Auditor-General and his department. Any transfer of money voted for one purpose to the other is illegal and has to be reported by the Auditor-General to the Public Accounts Committee of the House of Commons. His office and functions are considered so important that his salary, like those of the Judges, is charged upon the Consolidated Fund by a statute for which annual renewal is not required.

The methods of the exercise of Parliament's financial power may be summed up as under:

(1) Determination of the sources from which, and the

conditions under which, the national revenues are to be raised.

(2) Grant of moneys estimated by the ministers to be necessary to carry on the government, together with the appropriation of these grants to specific purposes.

(3) Criticism, in debate, of the manner in which the funds are spent.

(4) An audit of the accounts by a parliamentary officer.

Control of Administration. In addition to the work of legislation which is quite important, the British Parliament has quite different and vital functions to perform which legislatures of other great countries do not always have. It has a general control over the whole field of administration. It may enquire into matters of administration, it may investigate, rebuke, or even punish the responsible person present.

This control over administration is exercised in the following manner.

Firstly, the Parliament can compel a government in which it has lost confidence to resign. In recent times it has been comparatively rare for a government to be defeated in the commons because of the existence of a rigid party discipline, but short of forcing a ministry to resign, parliament can exert great pressure upon it in a number of ways. Members in their speeches in debates express their opinions either for or against the policy of the government, and with the enjoyment of the freedom of speech they need not be afraid of being harassed by the government for what they say on the floor of the House. And when many of the government's own supporters criticise its policy, though they may not vote against it, the government will probably feel bound to lend a responsive ear to what is said about its policy and make some attempt to meet criticism levelled against it.

Secondly, the Parliament has another opportunity for criticising the policy of the government or particular acts of administration during question time. Question time lasts forty-five minutes each day for four days in the week except on Friday during the session of Parliament. During this time members of Parliament can put questions on matters of public interest to the responsible minister. Discussion is not allowed, but supplementary questions arising out of the original question may be asked. Several considerations enter into the asking of questions.

Questions are asked partly for information, partly for partisan reasons and partly to bring abuses to light. In these and other ways Parliament can exercise a large measure of control even to the extent of forcing the Government to withdraw measures which have no popular support. For example, in 1937 the Government had to withdraw their

original proposal for a National Defence Contribution, proposed to be levied on the increase in profits of companies and firms, owing to the volume of criticism both outside and inside the Parliament.

Thirdly, petitions may be presented to parliament for redress of grievances by members of the public. These petitions must be presented to Parliament by a member on behalf of the petitioner. These are referred to a committee and may be debated by Parliament but this is rarely done.

Fourthly, either house may direct an enquiry to be held into any matter of public importance, for which purpose a select committee of either house may be appointed. Or the enquiry may be conducted by a committee of enquiry consisting partly of members of either house and partly of non-members. For example, committees of this type were appointed in 1916 to enquire into the conduct of operations in the Dardanelles and Mesopotamia. At that time a special Act was necessary to empower the committee to compel the attendance of witnesses. But now by the Tribunals of Inquiry (Evidence) Act, 1921, permanent provision is made, that when houses resolve that a tribunal should be set up to enquire into a matter of urgent public importance, the King or a Secretary of State may set up such a tribunal and it shall have the same power to compel the attendance of witnesses, and the production of documents as the Court of Session in Scotland or the High Court in England have Under the provisions of this Act a tribunal was set up in 1936, to enquire into the leakage of information about the Budget.

Fifthly, Parliament may also present an address to the King for the removal of certain officers, *e.g.* Judges.

Finally, Parliament has certain judicial functions which are now exercised by the House of Lords. The House of Lords is the highest Court of Appeal for civil cases in England and Scotland. It is now a finally established convention that lay peers do not participate in the judicial decisions of the House of Lords. The House of Lords has jurisdiction to try any peer accused of crimes classified as felonies in English law. Although trial by the House of Lords is called a privilege a peer accused of felony has no choice; he must be tried in this awkward and expensive way. The latest case to be tried by the House of Lords was the trial of Lord de Clifford who was accused of manslaughter in December, 1935. After that case the abolition of the procedure was seriously discussed.

The other minor judicial function of the House of Lords is in cases of impeachment. The procedure in such cases is that the House of Commons makes the accusation and the House of Lords sits as a Court and hears the accusation. Impeachment may be now considered obsolete.

The Role of the Opposition in Government —It has been noticed that the main function of the British Parliament is to criticise. In its criticism of the government the Opposition plays an important part ; in fact the Opposition is as important a part of the Parliament as the government is. Its members, if one may say, are ' critics by profession '. Its importance is brought out even in the topography of the House of Commons. The seats in the House are arranged *not* in a semi-circle, but facing each other in two large blocks separated by a gangway. The right of the Speaker is occupied by the Government and its supporters : the seats to the left of the Speaker are occupied by the Opposition. Thus there is no gradation from right to left, but a clear division. This division creates difficulties for many members who are of two minds yet are not decided to leave their old seats and go to the other side.

The members of the Government sit on the front bench on the right of the Speaker and the leaders of the Opposition occupy the front bench on his left. Thus there is a ' Shadow Cabinet ' opposite the cabinet, that is opposite His Majesty's Government sits His Majesty's Opposition. The term His Majesty's Opposition was first used in joke, but it stuck and has become official. His Majesty's Opposition is His Majesty's Alternative Government. A small change in voting at the next election may cause the Government and Opposition to change places. The Leader of the Opposition is a paid servant of the Crown, he has a salary which is charged on public revenues He is paid because he has an important function—that of opposing to perform and should be enabled to perform it without the anxiety of earning a living.

This means that in British politics Opposition is regarded as ' an essential part ' of the British Constitution. The English constitution may not function as it does if there were no Opposition. In the nature of things the constitution demands the Opposition. The Government governs because of its majority in the Commons but it must govern under the lynx-eyed Opposition, under a constant volley of criticism from that part of the House whose main function is to oppose. After all ministers are also mortal and what the Opposition says may be so reasonable or persuasive that it may swing ' the floating vote ', and if it succeeds in swinging a sufficient number of ' floating votes ' it may cause the Government to take stock of its acts of omission or commission. Ministers must answer argument by argument : they must meet a half truth if not by a full turth, at least by a more ' attractive half-truth ', if they do not desire to endanger the chances of their party.

Thus appeal to the people is not a ceremony in English politics, but a continuous process. But it must be pointed out that even in normal times, the business of the Opposition is not to obstruct government : its purpose is not to hinder but to criticise. There may be extraordinary circumstances where obstruction may be necessary. In wartime government expects and receives power to legislate by Order-in-Council because ' enemies do not travel at the speed of the democratic process.'

There is no doubt that the Opposition delays the process of government, but if it is an intelligent Opposition (Opposition is always considered more intelligent than the government) it does not delay un-necessarily. The British Parliament passed so much legislation between September, 1 and 7, 1943 which could have taken two or three sessions to get through. It was made possible because the Opposition had agreed not to oppose.

In conclusion we may point out that this English system of government by cross talk is made possible by the practical poiltical sense of the Englishman and by the ability of the House of Commons to find able speakers. But all speakers are able, all are equally regreted, all are irreplaceable, but a speaker is always found, and almost invariably, among the mediocrities' of the House.

It may be pointed out in passing that the present House of Commons differs from an ordinary House in that, there is no Opposition. There is a national government in England at present and therefore the question of Opposition does not arise. But the functions which the Opposition normally fulfils must now be performed by private members of the House.

QUESTIONS AND TOPICS.

1. Discuss parliamentary procedure in regard to public bills.
2. Describe parliamentary procedure in regard to money bills.
3. How does the Parliament control the Government ?
4. Write short notes on (1) closure, (2) adjournment motion, (3) guillotine and (4) Kangaroo closure.
5. Describe the committee system in the House of Commons.

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Chapter 9.

THE CABINET.

To understand the English governmental system correctly and specially the manner in which the powers of the Crown are exercised requires that distinction should be made between three closely related yet essentially separate institutions: (1) The Privy Council, (2) the Ministry and (3) the Cabinet.

The Privy Council. From 15th century onwards the Privy Council was a group of persons who gave advice to the King and assisted him to some extent in the supervision of administration. The number of the Council was variable and always tended to increase. This tendency as well as the fact made secrecy and dispatch of business impossible. Because of its large size the King was led to take into confidence only certain members of the larger body and leaving the rest to the routine of their stations and offices. Thus arose the Cabinet—those few whom the King took into his confidence—which throughout its history has been an inner circle not known to the law of the land.

The older and the larger body—the Privy Council—is not dead to-day; it still survives and in law as well as in theory is still the great advisory and administrative agency of the governmental system of England. A cabinet member is known to law and possesses authority only as a Privy Councillor. In point of fact the council is now only a formal institution. It meets only for ceremonial purposes—at a coronation. Although in law its action is necessary to many great measures of state, but decisions in all matters can be made in its name by as few as three of its members.

All Cabinet ministers belong to the Privy Council, therefore any ordinary meeting of the Cabinet satisfies all legal requirements for a meeting of the Privy Council. Thus the Cabinet may be said to be a committee of the council, but it is not the only committee; there are other committees of the council also. The Judicial Committee of the Privy Council formed in 1833, the Board of Trade, Board of Education all originated as committees of the Privy Council.

The members of the Council are appointed by the Crown, for life; most of them gain admittance by their appointment to Cabinet offices. Its number is not fixed; at present it consists of a little more than three hundred members. Though all cabinet ministers are Privy Councillors, all Privy Councillors are not Cabinet Ministers.

The Ministry and the Cabinet. The Cabinet includes only the inner ring of the most important ministers. The majority of the holders of ministerial offices do not have cabinet rank. For example, the ministry includes the Minister of Pensions, the

Junior Lords of the Treasury, the Under-Secretaries of State and certain officers of the King's household, all of whom are appointed by the Prime Minister and resign with him. They are members of the ministry but not of the Cabinet (the exception being the Attorney-General). There are generally about sixty to sixty-two members of the ministry, of whom about twenty to twenty-two are members of the Cabinet. All members of the Cabinet are members of the ministry, but all ministers are not members of the Cabinet.)

The Cabinet. In general terms cabinets may be defined as small bodies of men who are selected from amongst the leaders of one party or a combination of parties which is in majority in the legislature, Such persons more often than not must be selected from amongst the members of the legislature and who exercise the power of the government and remain in office during the period they enjoy the confidence of the legislature or for the period which that body permits.

In England the Cabinet may be said to be a committee of the party or combination of parties which can command a majority in the House of Commons. The description of the Cabinet is more functional than formal. It is as it should be. To-day, there is no sense in describing the Cabinet as a committee of certain members of the King's Privy Council to whom the power of the state as well as the executive direction is entrusted and confided. With more sense of truth it may be said that it is a secret committee. The real function of the Cabinet is to govern the country on behalf of the party or parties which provide it with a majority in the Commons.

Cabinet is often described as a committee of the legislature also. In a sense it may be said to be a committee ; but it must be pointed out that the process of its selection is complex atnd is not express choice by the legislature and the articles of he delegation of power are at once vague and elastic. These are the essential elements in the constitution of a committee and these are lacking in the case of the Cabinet, therefore in another sense it is not a committee of the lagislature.

The Cabinet is an instrument for linking the legislative branch of government to the executive. It may be said to be a meeting of those servants of the Crown who hold the highest offices of State and determine its policy in all those matters which do not come within the province of individual ministers. It is a body which manages the departments of state, each member of this body, with the exception of one or two, directs and controls the day to day administration of some great branch of governmental activity. In effect it is a body which finally decides the execution of policy, the making of laws, how effectively certain tasks shall be under-taken, how much money shall be raised, and how much money shall be spent, what policy should be pursued in domestic as well as in foreign affairs.

The members of this committee (Cabinet) explain to Parliament their motives, reasons and intentions for their

policies and projects. Bring their measures before Parliament for its approval, are responsible and answer for the progress of administration, for which, because they have accepted office, they alone are answerable and responsible. They are blamed or praised, according as, in the opinion of the Parliament they have succeeded or failed in working happiness or misery, prosperity or poverty. The whole machinery of government both in its creation and execution of political decisions centres in them.

This small body of men is considered to have become so powerful and so busy that a charge of tyranny is made against it and it is maintained that those dark and fearful prophesies which were made about the decline in the power of the legislature which was once its master, have come true. To-day the servant has become master's master.

Appointment of the Prime Minister. In theory the appointment of a prime minister is vested in the King in his discretion. In practice this discretion is rigidly limited. For example, when the Government is defeated and the Opposition has its own chosen leader, the King is left no choice except to offer the office to a person so chosen. Again, on the resignation of a prime minister, party and public opinion may be so clear that the King may be compelled to follow the drift of this opinion, as was the case when Lord Baldwin resigned in 1937, the reason being that in such circumstances, no other nominee will be able to form the Government. Thus convention now requires that where the political circumstances are normal and the wishes of a party clear the King shall not go against the wishes of the party.

There is another limitation on the discretion of the King. The number of possible Prime Ministers in a party at any given time is limited by public and party opinion, and it is not possible for the King to go beyond this circle : if he does his action will be widely resented on the ground that it is a breach of the conventions upon which party government is based. He will further find that his appointee will not be able to form a government, and if he succeeds in forming one he will not be able to maintain it for any length of time. The failure of the King's nominee will be a criticism of the exercise of the King's discretion. But the essence of royal functions is that discretion must be exercised in a manner as not to invite public criticism. Because the King is above party politics, he is no partisan and even if he is, he should act in a manner not to appear so. Dr. Jennings admirably sums up the position of the King when he says that " the King's task is only to secure a Government, not to try to form a Government of which he approves. To do so would be to engage in party politics. It is, moreover, essential to the belief in the monarch's impartiality not only that he should in fact act impartially but he should appear to act impartially. The only method by which this can be demonstrated is to send at once for the leader of the Opposition."

This has been the case since 1839 with one or two exceptions. For example. to take two recent cases, the King at once invited the late Mr. Ramsay MacDonald on his defeat and resignation in 1924 ; and on Mr. Ramsay MacDonald's resignation together with his Cabinet in 1931 the King at once saw Lord Baldwin. But with regard to the 1931 case doubt is expressed and it is freely being said that Mr. MacDonald's appointment on that occasion was more in the nature of the personal nomination of the King rather than of a party leader.

The case is interesting and deserves a little more consideration ; it must be pointed out that in the absence of authoritative evidence one has to depend largely on conjecture. It is universally known that the Labour Government could not agree in regard to the solution of its financial troubles, and authorised Mr. Ramsay MacDonald to resign on 23rd August. It is also known that the King was advised by the Prime Minister to see Mr. Baldwin (as he then was) as Leader of the Conservative Party and Sir Herbert Samuel as Leader of the Liberal Party, both representing the Opposition on behalf of their respective parties. The King was advised to do so in order, as the official announcement said, ' to hear from themselves what the position of their respective parties was.' Thus it is clear that in the light of the above it can not be supposed that this meeting was concerned either with the question of the resignation of the Labour Government or the formation of a new one. While presenting the resignation of the Cabinet to the King on August 24, Ramsay MacDonald again advised the King to see Mr. Baldwin and Sir Herbert Samuel. There is no information of what occurred at this interview, at which it is said that Ramsay MacDonald was present. But Sidney Webb (Colonial Secretary, in the MacDonald Cabinet) tells us : " What is said is that the King, with whom the Prime Minister had been in constant communication, but who never went outside his constitutional position, made a strong appeal to him to stand by the nation in this financial crisis, and to seek the support of leading members of the Conservative and Liberal parties in forming, in conjunction with such members of his own party as would come in, a United National Government. The King is believed to have made a correspondingly strong appeal to the Liberal and Conservative leaders."[1] But what is universally known is that immediately after resigning the leadership of the Labour Government Mr. MacDonald assumed the Prime Ministership of the National Government.

But Professor Laski tells as certain other things also which were known. (1) The Labour Cabinet, as a Cabinet, had no knowledge on August 23 that Ramsay MacDonald contemplated to desert them. Only the four ministers who joined the new Government may have known it, the rest until the return of Ramsay MacDonald to Downing Street on August 24 assumed naturally that since he was to resign, Mr. Baldwin would become the Prime Minister. (2) According to Professor Laski, it must be assumed that the King was aware that only four ministers

1. Laski Parliamentary Government, (1938), p. 234.

would follow Ramsay MacDonald and therefore the majority of his colleagues and of his party were in disagreement with him. It is known now that this was the case ; only sixteen out of two hundred and eighty-nine members of the Labour Party in the Parliament followed Ramsay MacDonald. (3) It is now known that the King was never advised by Mr. MacDonald to communicate with Mr. Henderson, the Leader of that element in the Labour Cabinet who disagreed with Ramsay Mac Donald, and who was elected Labour Party's Leader on the expulsion of its former Prime Minister. (4) Professor Laski would have us assume that the suggestion that Mr. Ramsay MacDonald be the new Prime Minister came from the King and was accepted by Mr. Baldwin and Sir Herbert Samuel in consequence of what has been called by Mr. Webb 'a correspondingly strong appeal' made by the King to them. It has been never either said or suggested that the idea of a MacDonald Premiership of a National Government came either from Sir Herbert Samuel or Mr. Baldwin. Neither Sir Samuel nor Mr. Baldwin is known to have discussed this idea with their party members before Ramsay MacDonald accepted the commission to form the National Government on August 24.

In the light of the above it is suggested that Mr. MacDonald's appearance as Premier of a coalition government the members of which had been denouncing his previous Government up to the very moment of the formation of the new Cabinet has something of the character of a ' Palace revolution.' In this sense and in the light of the above information Mr. MacDonald's appointment on this occasion may be regarded as the personal nomination of the King[1]. Another school of thought headed by Dr. Jennings regards the action of the King as constitutional. But it may be pointed out that the term constitutional is an elastic term. If it is accepted in this case, it would mean that the King can make any one whom he wishes Premier so long as his action is approved in a subsequent general election. On this hypothesis it would also mean that the leader of one party, without the knowledge of his colleagues, can be persuaded to cross over to his opponents by a royal appeal ; this would imply the ignoring of normal expectations of the party system which is the basis of the Parliamentary government in England. Thus the theory appears to be based upon the supposition that the King deals with persons and not parties and that he is entitled to do so if his action is subsequently approved by the electorate. If this is granted, then the King must be regarded as a factor of great importance in any political crisis in England in which direction of events is not certain.

This case has been discussed to point out that it is not always true to say that the direction of the King in the choice of the Prime Minister is rigidly restricted. Circumstances, like

1. The whole 1931 episode is well discussed in "Laski's Parliamentary Government" pp. 232—236.

those of 1931, may leave the King a wide discretion in the appointment of the Premier.

In conclusion it may be said that normally the King has no wide choice in the matter, and the man who is best able to command the support of the majority is sent for by the King, promptly and as a matter of course, to form a government. It must also be pointed out that until recent years the appointment of a prime minister was not a difficult question, because each party was definite about the person who should be called upon, as there were only two parties, one of which was necessarily in a majority in the Legislature. But since the rise of the third party—Labour—the former simplicity is gone. It is now never certain that any one party will be able to outvote a combination of others. But so far the problem has not caused any remarkable anxiety, for in one case it was found that the Liberal Party could support a Labour Government at least for a time, while in another case the Labour Party without having an absolute majority in the House of Commons had the largest number of seats and in this case numerical rule was followed. In more recent times it is not any one party government but a no-party or a National Government.

" **The Formation of a Cabinet.** The Prime Minister thus indicated and chosen is entrusted with the formation of government. In the choice of his colleagues the Prime Minister is not controlled by the Crown. But for his decisions he must receive the approval of the sovereign. If he is a strong man and persists in his determination and decision he may be always sure of royal approval. Because if objections to his decisions are carried too far he can always resign his commission ; and it is not likely that any sovereign will push matters to that point. But it must be clearly understood that the right of the King to discuss appointments to the Cabinet is fundamental ; and on some occasions personal likes and dislikes of the King have been the means of including or excluding persons out of the Cabinet. For example, Lord Derby in 1852 did not propose Lord Palmerston as Foreign Secretary because of the personal feelings of the Queen. In 1868 Queen Victoria tried to prevent Lord Clarendon from being appointed Foreign Secretary, and in 1886 she successfully prevented Lord Ripon from being appointed to the India Office. As already said, it is on occasions and not always that the personal likes or dislikes of a sovereign are taken into consideration in the formation of the Cabinet. It depends more or less on the personality of the Prime Minister. If not the personal wishes of the Crown, then what other considerations dictate the composition of the Cabinet. "

" **Considerations dictating the composition of the Cabinet.** It is fortunate for England that the Prime Minister is not encumbered and embarrassed by the personal wishes of the monarch, because his task is already more than difficult. In theory the Prime Minister has an unrestricted

discretion. Even to-day, broadly speaking, this is the rule ; though in 1929 a small committee of the Labour Party, consisting of Phillip Snowden, Henderson, Clynes and J. H. Thomas, discussed with the Prime Minister quite comprehensively the distribution of offices. In point of fact the Prime Minister has a wide discretion but consultation with his personal friends in the party is imperative. His work is not only to form a team, but a team that will satisfy his other party leaders. He can not act in an autocratic manner. He can not impose his views upon them against their will, because there is always the danger that they may refuse to serve. For example, just before the general election in 1923 Mr. Baldwin wanted to include Lord Birkenhead and Sir A. Chamberlain as ministers without portfolio in his Cabinet, but could not do so because of the opposition of his party colleagues.

Another limitation on the discretion of the Prime Minister is when he is called upon to form a coalition government. In this case the leader or leaders of the other party or parties, as the case may be, must be satisfied.

The Prime Minister is further limited in the task of the formation of his Cabinet by the need to fulfil the statutory requirement for representation in the House of Lords.

It may be said that it is a fair calculation that approximately half the members of the Cabinet nominate themselves, by their standing in their party or parties, and again about half of these can bring great pressure on the Prime Minister to get the posts they want. It is only with the other half that the Prime Minister may be said to have really a free hand.

But what does the Prime Minister seek in those whom he intends to choose ? The experience of more than a century and a half shows what special and extraordinary combination of considerations plays its part in the composition of the Cabinet.

First of all the Prime Minister seeks for capacity in a cabinet minister to manage the department, capacity for creativeness, and ability in general counsel ; and mere cleverness in a person does not guarantee these.

Secondly he looks for industry, sharpness of intelligence, polished bravery and a peaceful character which may compel others to quiet consideration by its mere presence.

Thirdly sincerity and some element of good humour are also sought for by the Prime Minister in a Cabinet minister. All these qualities and many others are required, and the ideal government may be said to be one in which there is a proper combination of talent and character to satisfy the needs of the departments as well as the needs of the country.

There may be still other considerations. Ministers to be must be good debaters so that they may be able to satisfy

and convince the House of Commons and the House of Lords that their administration deserves the continuation of the Parliament's confidence : they must also be able to deal with the criticism of the Opposition. In addition to this they must be good platform speakers and popular with the electorate. The Prime Minister may consider it better to select a person of a mediocre brain but of character ; for the country may suffer from inferiority of talents for government, but it may by other personal qualities be guided to believe that all is well and good because if the Cabinet suffers from lack of popularity its leader, the Prime Minister, is entitled to believe in a democratic system that the country will be better governed under the opposition.

In the formation of a cabinet the personal likes and dislikes of the Prime Minister have great weight. Young men of about the same age and attainments must be treated about equally. //

Powers and Position of the Prime Minister. It has been noticed that the appointment or rather the selection of the Prime Minister is the first stage in the formation of the cabinet. Let us now consider his powers and position. He creates, keeps and destroys the cabinet. He is the key-stone of the cabinet arch and therefore 'central to its formation, central to its life, and central to its death.' Every cabinet takes its colour from what the Prime Minister does towards it and what the Prime Minister is. But it does not mean that the Prime Minister is the master of his cabinet in the sense in which the president of America is of his. But it must also he pointed out that the Prime Minister of England is not first among the colleagues(primus inter pares), as is generally believed. This description of his position to-day is far from being true. He is something more than that, though he is not an autocrat. He chooses his ministers and determines who of them shall be in the cabinet. Though some of his prominent lieutenants choose themselves, but often the Prime Minister is in a position to ignore them. For example the late Mr, Chamberlain could keep out Churchill and Amery, though the late Mr. Ramsay MacDonald could not keep out Henderson. He can shuffle his pack as he likes. There is no doubt that the Prime Minister of England has very extensive and considerable personal powers and influence, but the condition of the exercise of this influence and power is that he should be able to persuade and not coerce. It is true that he can always compel any one of his colleagues to resign, but examples may be quoted to show that his compulsions are his perils.

The Prime Minister of England is often compared to a dictator. This is not without some sense. The formal powers which belong to him compare very favourably to those of an autocrat. The prerogatives which the king has lost in the course of history have fallen into the lap of the Prime Minister by reason of his position of the principal responsible adviser of the sovereign ; those prerogatives which he has not inherited

directly have fallen in the gift of the cabinet. But he is the central figure in the cabinet. The cabinet, to be more appropriate the government, is ' the master of the country and he is the master of the government.' Besides, he is the most prominent member of the Parliament, generally he is the leader of the House of Commons.' His party is in majority in the House and therefore in a position to determine the action of parliament, and it must also he remembered that he controls his party. Parliament is legally and actually sovereign and it is the Prime Minister who ' decides its timetable, and can summon, prorogue, or dissolve it.'

The powers of the Prime Minister are enormous and extensive, but they belong more to the office than to the person. His position does not differ from that of the dictator in the fact that he may be replaced ; a dictator can also he replaced. The difference in his position from that of the dictator lies in the continuous process of criticism during the term of the office of the Prime Minister to replace him. A dictator fights shy of opposition, he can not tolerate it, he does not allow it to exist. The Prime Minister has not only to tolerate the existence of of His Majesty's Opposition, but to recognise it. But if he can keep the confidence of the majority in the House of Commons he is, like a dictator, irreplaceable.

Again the Prime Minister of England is not so much in the public eye as the modern dictator. The colleagues of the Prime Minister also share publicity with him. Officially he is still first among the colleagues, but if there is a crisis and he happens to be a man of experience, reputation and of strong and outstanding personality his colleagues fade into his shadow. He is not, like the dictator, official head of the state. In brief the Prime Minister of England is something more as well as something less than a dictator.

Powers and Functions. The most important power and function of the Prime Minister is the ' making and un-making of the government ' The King must accept his nominations to ministerial jobs if he insists. There have been cases when the advice of the king became almost an opposition, but it is the Prime Minister and not the King who is responsible for running the government and running it successfully, therefore the final decision with regard to the choice of a cabinet minister belongs to him and himalone. The Prime Minister can easily drop a colleague, he often does it in the ' general reshuffle of cabinet posts ' ; it is the best method as it avoids any slight on a person who may be commanding a good support in the parliament Often the Prime Minister advises the minister concerned to resign. For example in 1935 Sir Samuel Hoare, it is believed, was advised to resign from the foreign office.

The patronage in the hands of the Prime Minister is great. He grants all honours, including the creation of peerages. He appointsthe Governor-General of India, governors of the colonies, judges. ambassadors, heads of departments, chairmen of many

commissions and boards. In fact the list of those who are appointed by him is very large, the above one only a few of the offices which are in his gift. It must not be forgotten that in filling these offices he consults those who are directly concerned, *e.g.*, the minister in charge of the department, but it is the Prime Minister who is responsible for these appointments.

The Prime Minister is the chief adviser of the Crown. It is he who advises the King on such matters as royal visits to foreign lands, or touring any part of his kingdom or empire. For example Lord Baldwin advised Edward VIII (Duke of Windsor) with regard to his association with his future wife not on behalf of the cabinet but 'in virtue of his own position.' One of his first functions is to act as a link between the king and the cabinet, communicating and interpreting the opinions of the one to the other. Now-a-days the function is fulfilled by sending a copy of the minutes to the King.)

Prime Minister and Foreign Affairs. The Prime Minister has special responsibilities in the field of foreign affairs. Often far reaching decisions have to be taken immediately before a meeting of the cabinet can be called. In such circumstances he always consults the Foreign Secretary. It is not always easy or convenient to convey to the cabinet the niceties of diplomatic interchange and this fact makes a complete agreement between the Prime Minister and the foreign secretary imperative.

Qualifications of the Prime Minister. It must be clear from the above that the position, powers and functions of the Prime Minister of England are not only delicate but difficult as well. It is from the nature of his powers and functions that the qualifications necessary for a Prime Minister emerge. Some of these qualifications which a Prime Minister requires are: firstly, he must possess the courage for leadership. In the absence of this it will not be possible for him to form a government or lead his country. Secondly, he must be a good interpreter of public opinion: this is very important. Thirdly, he must be able to avoid antagonising sections of opinions before his position has become stabilised. Fourthly, he must have a personality which can inspire loyalty among his colleagues and confidence among the people. Fifthly, he must know how to deal with the House of Commons: this means that he should earn the reputation of being fair minded and considerate. Sixthly, he must have more of a persuasive than coereive nature. Seventhly, he must be a good judge of human nature and character. Eighthly, he must be a good colleague, easily accessible and confidential. Lastly, he should have imagination and vision with wide enough capacity and interests.

Who may be included in the Cabinet. No office carries with it an absolute right to a seat in the Cabinet, and membership in the Cabinet simply depends upon the receiving of an informal invitation from the Premier. But in practice ministers who hold the most important offices

are always invited to join the Cabinet. These ministers are :

1. The Chancellor of the Exchequer,
2. The Lord Chancellor,
3. The First Lord of the Admiralty,
4. The Minister of Health,
5. The Minister of Agriculture and Fisheries,
6. The Minister of Labour,
7. The Minister for Co-ordination of Defence,
8. The eight Secretaries of State,
9. The President of the Board of Education,
10. The President of the Board of Trade.

In addition to the above, the Lord President of the Council, the Lord Privy Seal, the Postmaster General are more often than not invited to join the Cabinet, while the Minister of Transport, the First Commissioner of Works, the Attorney-General and the Chancellor of the Duchy of Lancaster are sometimes invited to join the Cabinet and sometimes not. The invitation to join or not to join in these cases depends largely upon the personal qualifications of the particular individual holding the office at the time. It must be remembered that the size of the Cabinet is not fixed and is determined by the functions of government and the Cabinet thus must grow with the increase in the functions of government.

Implications of the Cabinet System. The Cabinet system in England has certain implications which may be stated as follows :—

1. The members of the Cabinet are as a rule members of Parliament. But there has been an exception, General Smuts of South Africa was a member of the War Cabinet in 1917 without being a member of Parliament.

2. That the members of the Cabinet are necessarily members of the majority party, may be of one or may be of a coalition of parties.

3. That they hold office only while Parliament and country do not discontinue their confidence in the government or in a minister.

4. That the Cabinet acts as a unit and this involves a certain predominance of the prime minister.

Functions of the Cabinet. The functions which the Cabinet has to perform are both important and extensive. According to an authoritative statement of the Machinery of Government Committee, 1918, these functions are :—

(*a*) the final determination of the policy to be submitted to Parliament ;

(*b*) the supreme control of the government of the country in accordance with the policy laid down by Parliament; and

(*c*) the delimitation and continuous co-ordination of the authority of the several departments of State.

Salient features in the actual working of the English Cabinet. In its actual working the English Cabinet system presents three salient features:

(1) Collective responsibility to Parliament.

(2) Secrecy of its proceedings.

(3) Close co-ordination of the Cabinet under the leadership of the Prime Minister.

The Doctrine of Collective Responsibility. It is a requisite of the modern cabinet system that responsibility should be collective. Matters are fully discussed in the cabinet and a decision taken. It then becomes obligatory on every Cabinet Minister as well as on every minister outside the Cabinet. He must vote with the Government if the occasion arises in Parliament, and if called upon he must be prepared to defend that decision; he can not excuse himself on the ground that he did not agree with the rest of his colleagues and he was outvoted. If he has not been able to modify his course inspite of the persuasions of his colleagues and does not agree to take responsibility for the decision he must resign.

For example, in 1853 Palmerstone resigned because he could not agree to Lord Russel's Reform Bill, though the resignation was withdrawn afterwards. In 1855 Russel and others resigned because of their disagreement. In 1867 Peel and others resigned because they could not support Disraeli's Reform Bill. In 1932, Herbert Samuel and others resigned because they could not support the Ottawa Agreement, and on February 20, 1938, Mr. Eden resigned making it clear in the House of Commons that he was not merely opposed to the time of negotiations with Italy, but to the substance of the Prime Minister's outlook for which he could not take responsibility. But it must be pointed out that rules which apply to Cabinet ministers are not quite so absolute in the case of minor ministers and relaxations are permitted in minor matters. But so far as fundamental questions are concerned no relaxations are allowed and the Cabinet must stand or fall as a unit. The theory of collective responsibility may be simply explained as one for all and all for one.

2 The Secrecy of Cabinet Proceedings. The responsibility of the Cabinet to the House of Commons and the collective nature of its responsibility require that the Cabinet must at all times endeavour to pesent a solid and an imposing front. This is secured in two ways. Firstly by the secrecy of its proceedings and secondly by the leadership of the Premier.

The leadership of the Premier has been discussed. It is now proposed to discuss secrecy of proceedings.

It is a clear as well as a simple principle that a body of men who have to formulate and execute policy on all possible subjects under the sun will be in a better position to agree if their differences are not made known to the world. It was in accordance with this principle that the German Bundesrath always met behind closed doors,

In the earlier part of the 19th century brief minutes of the cabinet proceedings were recorded. But in later times no clerical employee was allowed to be present and no formal record whatever was kept. For knowledge of past transactions a member of the cabinet had to depend upon his own memory or the meories of his colleagues, supplemented at times by privately kept notes. The late Lord Oxford once stated in the House of Commons in 1916. "The inflexible, unwritten rule of the Cabinet is that no members should take any note or record of the proceedings except the Prime Minister." Until 1916 there was no cabinet office and no cabinet secretary. therefore there was no formal agenda. This somewhat unbusiness like system broke down during the War when the cabinet had much more business to transact than in normal times. Moreover with the setting up of a large number of cabinet committees to deal with special subjects it was found that without a regular office to record the decisions and transmit them to proper authorities the work of these committees could not be properly co-ordinated. Therefore in 1916 an innovation was made by setting up a Cabinet Secretariat. The Cabinet Secretary or his deputy now attends cabinet meetings and keeps minutes. With the introduction of this system no doubt can now arise about what has been decided, because if any matter is not clear the Secretary would ask, "What have I to record ?". The cabinet secretary now has a number of clerks and typists, but all precautions are taken to ensure the secrey of the proceedings. It seems that the Cabinet Secretariat. although introduced as a special measure to meet special conditions of war will remain a permanent piece of the English constitutional machinery.

It may also be pointed out in passing that the principle of the secrecy of cabinet proceedings sometimes has been deliberately violated since the war of 1914-1918. This has been done for the sake of propaganda. For example, in the war-guilt controversy most countries published, with more or less accuracy. the official records of governmental proceedings in the critical years preceding hostilities; and thus the world came to possess information as to what happened in the cabinet. This is only one of several examples. No useful purpose will be served by multiplying examples. but it must be remembered that even today the rule is that the cabinet proceedings are kept secret.

Committees of the Cabinet. The cabinet from time to time sets up committees composed of its members to deal with particular problems and matters. There are also two standing committees which exist to advise the Cabinet and which are

composed partly of members of the Cabinet and partly of outsiders. The older of the committees is the Committee of Imperial Defence (established in 1895). It consists of the Prime Minister who is the chairmain, the Minister for Co-ordination of Defence who is the Deputy Chairman, the Secretaries of State for War, Air, Home Affairs, Foreign Affairs, Dominion Affairs, the Colonies and India, the Chancellor of the Exchequer, the First Lord of the Admiralty and the Chiefs of the Staff of the three fighting services. The composition of this committee is elastic; and other persons may be invited to attend from time. to time. It is only an advisory body and cannot make any executive decisions.

The second Advisory standing committee is the Economic Advisory Council (set up in 1925). It consists of the Premier who is the chairman, the Chancellor of the Exchequer, the President of the Board of Trade, the Minister of Agriculture and Fisheries and such other ministers who may be summoned from time to time together with such other persons as may be selected by the Premier for their expert knowledge. It is also an advisory body.

The Cabinet and the House of Commons. The Cabinet can continue in office only for so long as it is able to possess the confidence and support of a majority of the House of Commons. The moment it loses the confidence of the majority in the House of Commons it must resign. There are four ways in which a parliamentary majority may manifest its dissatisfaction with a cabinet and compel its resignation. These four ways are:—

1. The House of Commons may pass a simple vote of 'want of confidence' for which it is not bound to assign any reason.
2. It may pass a 'vote of censure' criticising the Cabinet for some specific act.
3. It may reject a measure which is declared by the Cabinet as vital.
4. Lastly, it may pass a bill in opposition to the advice of the ministers. The Cabinet is not obliged to pay any attention to an adverse vote in the House of Lords. But when any of these things happens in the House of Commons the Prime Minister and his colleague must do one of the two things—(1) Resign or (2) Appeal to the country by dissolving the Lower House.

Thus the very life of the Cabinet depends upon the confidence of the House of Commons and in theory at least the Cabinet is the servant of the House.

But in practice the position of the Cabinet is very strong, specially when it has a substantial majority in the House of Commons. In reality it is more in the position of a master than of a servant of the House of Commons. Its control arises from many factors. It includes many of the most important members of the House who are able to expound their policy and exercise

a powerful persuasive influence upon the House. But if persuasion fails it can resort to coercion. It has a right to advise the King to dissolve the House of Commons and can always threaten to use this right. It is now recognised that this right of dissolution will always be exercised if the Cabinet is defeated in the Lower House on any question of confidence. Further all votes on Government bills or on any branch of Government policy are now considered as questions of confidence. Every member voting against the Government knows that if his vote is instrumental in bringing about the defeat of the Government he is responsible for the subsequent general election. Opposition members may be quite willing to accept this responsibility in the hope that thay may obtain majority at the election. But Government party members do not want to risk a general election which may result in the defeat of the government and thus drive them out of office. A further consideration on their part against a general election is that if they had voted against the Government they can not expect the support of the party organization at the time of the election and thus are sure to lose their seats. Thus by maintaining a standing threat to dissolve the House of Commons the Cabinet is practically certain that it will not be defeated in the House of Commons unless it does something which violently outrags the views of its supporters.

This results in the fact that the debates in the House of Commons lack reality, because they can not influence and affect the decision which is to follow the debate. It means that speeches in the House of Commons are of no more practical effect than speeches made in a college debating society. Therefore it is now often said that the Parliament has almost ceased to be an effective body and is used as an instrument to give final legal and formal authority to decisions which are really taken by the Cabinet and which the House of Commons can not influence. The view is not without some foundation at least, but it is more often than not exaggerated. The Cabinet is still sensitive to the opinion in the House of Commons and examples may be pointed out when the cabinet in more recent times has actually withdrawn measures after publicly introducing them in the Parliament. It has been done in deference to the views of the supporters of the Government in the House of Commons. For example, the original proposal in the 1937 Budget for the National Defence Contribution excited very strong criticism and the Government as a response to the critics withdrew the measure. No doubt that it was vehemently criticised in the press and on the platform outside the Parliament also, but the Parliament was the central point where the criticism was focussed on the Government.

In conclusion one may say that while the cabinet without doubt has considerable power to control, influence and even coerce the House of Commons, it is bound to pay some regard to the opinion of the House.))

The Cabinet and the Crown. There is a close and continuous contact between the Cabinet and the Crown. Legally

speaking Ministers are only the Ministers of the Crown, but convention has brought about a change and Ministers are now Ministers of the people. Consequently the responsibility which was formerly due to the Crown is now owed to the people and Parliament. A minister assumes this responsibility by accepting a well established convention that in all its public acts the Crown needs the countersignature of his minister, again this countersignature is the expression of the principle that responsibility for the sovereign, is accepted. Thus the person of the Crown is lifted out or above the field of political controversy or decision.

But there are certain conventions which still afford a very real opportunity to the Crown for political activity. The King has the right to comment upon the proposals of the Cabinet, in addition to this he can also bring questions for discussion before it. Further, he has the right to be consulted before any public enquiry or any bill is announced. Queen Victoria went a step further when she pointed out after consulting Lord Salisbury, who was the Leader of the Opposition that 'a Cabinet minister cannot speak upon a grave public question not before the Cabinet without preliminary discussion with the Palace'. Edward VII complained bitterly against Lloyd George for his vitrolic and damaging criticism of the House of Lords. Again the Crown has also the right to see all important dispatches in all departments and 'to have its comments thereon considered.'

Thus it may be observed that the power of the Crown in relation to the Cabinet is *real*. It is true that the exercise of this power depends upon the character of the monarch as well as of the Cabinet. A strong Prime Minister like Churchill may be able to transform the Crown into a kind of pocket borough for his own purposes. It may be just the opposite as well. The point is that under no circumstances the influence of the monarch can 'ever be negligible.' This influence at times may be dangerous, at others important, beneficial and far reaching on any score, it can be safely said that the position of a constitutional monarch in relation to the Cabinet is not only a difficult, but a delicate one as well. Much evidence is available to suggest that it is more through the ministers than through the monarch that the system of constitutional monarchy has worked well.

QUESTIONS AND TOPICS

1. Critically examine the position of the Prime Minister in relation to the Cabinet and the House of Commons.

2. Discuss the relation of the Cabinet with the House of Commons.

3. What is meant by cabinet responsibility ?

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CHAPTER 10.

THE MONARCHY.

Distinction between the King and the Crown. In the preceding pages we made it clear that the engines of politics lie elaborately in the political parties, in the House of Commons and the Cabinet. Yet England is legally a Monarchy. It is commonly described as a constitutional monarchy. When reference is made to the actions of the Crown in politics what is meant is that the people. Parliament and the Cabinet have acted through the formal arrangements established by centuries of constitutional development. The Crown is the ornamental cap over all these centres of political motive power. We do not mean the person of the Crown—the Queen or the King—but the institutions which act in, or borrow, the name of the Crown. The powers of the Crown under the English Constitution are vast, numerous and of transcendent importance. The Government could not function even for an hour if these powers were not exercised, and to-day the powers of the Crown are more extensive than at any time in the past two hundred years. But as already said, the Crown is not the King. And if you ask what or who the Crown is one would answer that 'it is a convenient working hypothesis.' It means that Ministers or Parliament shall supply the motive power and discretion, while consummating a particular act, *e. g.*, making a law, or inspecting a factory, to borrow the symbol and the name of the Crown, allowing the occupant of the throne no share at all in the creation of their policy. Or, in other words, it is possible theoretically to arrange that a certain person shall be only a figure-head, a rubber stamp, or an instrument of signature.

The laws and the conventions do not make any distinction between the rights, the prerogatives and the powers of the actual sovereign and those of the mythical, all-embracing, immortal, infalliable and omnipotent personality or institution which is technically the central or the binding force of the governmental system of England. There is no such thing as the English monarchy, as it is represented in the courts of law, in statutes, in formal documents and in proclamations. The Government of England is not a government by a sub-divine despot. The sovereign—hereditary and ceremonial head of a parliamentary democracy—has numerous privileges and attributes but the tremendous powers technically vested in him he does not possess. They belong to a convenient myth known as the Crown, but which almost as well may be called the nation or the will of the people or any other suitable abstraction. Thus the Crown is no longer the King.

Powers pass from the King to the Crown. The process of transfer of power from the King to the Crown has been

going on through centuries of English constitutional history. There was a time when the King had real and absolute powers in the entire field of government It was certainly so under the Tudors in the 16th Century. But the Civil War cut off large prerogatives. And the Revolution of 1688-89 surrendered many more. It effected an important as well as a permanent change in the balance of political focus within the state. Down to 1688 the King was the efficient factor in the constitution ; he ruled as well as reigned ; the government of the state depended on the character of the monarch. Thenceforward it was not so ; the centre of political gravity shifted from the Crown to Parliament, the King still reigned but he gradually ceased to rule. From the great struggle for sovereignty Parliament emerged victorious. The apathy and weakness of the early Hanoverian Kings cost much and the trend against royal control in government continued strong even under good monarchs till the powers exercised by the King in his person came to belong to the Crown, *i.e.*, to the office and not to the person.

The Powers of the Crown. According to the historical theory, the powers of the Crown are very vast and numerous ; but these powers though once exercised fully and freely now vest in the hands of the Cabinet and are exercised by that body.

These powers are of dual origin :

1. Powers based on custom or prerogative, and
2. Powers based on Parliamentary definition or grant.

Powers based on Parliamentary definition or grant are easily measurable and definite, while those that flow from prerogative more often than not are not clear.

Prerogative Powers of the Crown. Prerogative has been defined by Dicey as 'the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the Crown.' It may also be defined as 'that pre-eminence which the sovereign enjoys over and above all other persons by virtue of the common law, but out of its ordinary course, and comprehends all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown of England.'

The elements of prerogative are to be ascertained from precedents not from statutes, and its sources, according to Anson, are :

1. The residue of the executive power which the King possessed in the whole field of government in the early stages of English history ;
2. Survivals of the power which once belonged to the King as the feudal chief of the country, and
3. Attributes with which the Crown has been invested by legal theory, *e.g.*, the attribute of perfection of judgment expressed in the saying 'The King can do no wrong,' and that of perpetuity expressed in the saying 'The King never dies.'

It must be observed here that many existing powers of the Crown represent oiginal prerogative modified by Parliament, so that it often becomes difficult to decide whether a given power exists by virtue of a statute which defines it absolutely or by virtue of original prerogative. But a definitely established principle of the working constitution is that the prerogative of the Crown may be restricted, defined or extended by Parliamentary enactment.

How Prerogative Powers are exercised. The manner in which the prerogative is exercised is another example of the divergence between theory and practice in the constitution of England. Only personal prerogatives are excrcised by the sovereign personally while all prerogatives which are not personal are exercised not by the sovereign but by the Cabinet in the name of the Crown. For example, in 1830 George IV taking compassion on an Irishman convicted of arson and sentenced to death, desired to exercise the prerogative of mercy and wrote to the Lord-Lieutenant of Ireland to that effect. The then Home Secretary (Sir Robert Peel) disapproved the King's action and addressed a strong remonstrance to the King for exercising the prerogative of mercy without the knowledge and approval of his Minister, and the Prime Minister (Duke of Wellington) interviewed the King who had to give way and the man was hanged.

Thus it is the majority or the leading party in the Parliament, or, to be more accurate, the Cabinet, which really exercises the prerogative ; party government is nothing but the exercising of the King's prerogative by the majority party. There are two constitutional checks on the exercise of prerogative : (1) Responsibility of the Cabinet to the Parliament ; (2) absence of administrative law.

Present Prerogatives. The existing prerogatives of the Crown are too numerous to be mentioned in full. Here are some of these : control of the army and navy, general defence of the realm, government of the colony to which responsible government has not been granted ; conferring of titles and honours ; making of war, peace and treaties, appointment of ambassadors, grant of charters and franchise, grant of pardon, dissolution of the House of Commons, etc.

Personal Prerogatives. The Crown enjoys many privileges and immunities in legal proceedings. The most important of these attributes are :

1. The King can do no wrong. This follows from the attributes of perfection. It means two things :—
   (*a*) That the King is not personally liable for any act done by him, because the King in his personal capacity is not answerable to any person or tribunal on earth.
   (*b*) No one can plead the orders of the Crown in defence of any act which is illegal or wrongfully

done. If the King can do no wrong, he can not authorise wrong.

But this does not mean that the King is above law ; it simply means that the royal prerogative being for the benefit of people. the King can not sanction any act which is forbidden by law. According to Blackstone, 'the King is not only incapable of doing wrong but even of thinking wrong.'

2. The King never dies. It is an attribute of perpetuity.
3. The King is never an infant—an attribute of perfection.

It has been observed that the prerogative of the Crown may be defined, restricted or extended by Parliamentary enactment. It means that the powers of the Crown are always in constant flux. At the same time they are being increased as well as diminished. The powers of the Crown have been reduced principally in three ways :—

1. By great contractual agreements between the King and the people, *e.g.*, Magna Carta, Petition of Rights etc.
2. By prohibitive legislation, *i.e.*, when the Parliament has prohibited by law the suspending of or dispensing with laws, debasing coinage etc.
3. By disuse, *e.g.*, the King can not now add to the membership of the House of Commons.

On the other hand, the powers of the Crown have been steadily increased both by legislation and by custom in recent centuries, particularly by legislation. For example, when Parliament makes an unemployment insurance law, establishes an old age pensions system, authorises a new tax, adds an air force to the defence forces, it imposes new duties of administration upon the Crown and by doing so it increases the volume of the powers of the Crown.

The steady increase in the powers of the Crown is due to the enormous expansion of the functions and activities of the government in the nineteenth and twentieth centuries. President Lowell writing of the prerogative powers of the Crown concludes : " All told the executive authority of the Crown is, in the eye of the law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism, and although the Crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation .....Since the accession of the House of Hanover the new powers conferred upon the Crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or become obsolete by disuse. By far the greater part of the prerogative, as it

existed at that time, has remained legally vested in the Crown and can be exercised to-day."[1]

The Powers of the Crown Classified. The powers of the Crown fall into three principal groups : (1) Executive, (2) Legislative and (3) Judicial.

Executive. The executive powers of the Crown are numerous and vast. Some of the most important are :

1. Appointment, directly, or indirectly, of all national public officers with the exception of a few hereditary dignitaries, and certain officials of the Parliamentary Chambers.
2. Removal on occasion of all appointed officers except judges, the advisers of the Secretary of State for India and the Comptroller and Auditor General.
3. Execution of all laws and supervision of the executive machinery of the State in all of its branches.
4. Expenditure of public money in accordance with appropriations voted by Parliament.
5. Granting, in so far as not prohibited by statute, of charters of incorporation.
6. Creating of all peers and conferring of all honours and titles.
7. Coining of money.
8. Summoning of the convocation and appointment of archbishops, bishops and most of the deacons, etc.
9. Supreme command of army and navy.
10. Suspension or control over local government, education, pauperism etc.
11. Conducting of foreign affairs of the nation.

Legislative. Technically all legislative power is vested in 'the King in Parliament.' Parliament functions and transacts business during the pleasure of the Crown. The Crown summons and prorogues the houses of legislature. It can dissolve the House of Commons at any time it pleases. No parliamentary act is valid without the assent of the Crown.

Judicial. The Courts of Justice are His Majesty's Courts of Justice, the Judges are His Majesty's Judges. The Crown is the fountain of Justice ; it has the power of pardon.

Estimate of the Actual Powers of the Crown. The real executive in England is the Cabinet. All executive authority is exercised by the Cabinet in the name of the Crown. Even in the sphere of foreign affairs the customs and the statutes of the constitution do not permit the King as a person to be much more than an agent of Ministers who are responsible for the working of government in all fields of its activity, but then what is the position occupied by the Crown ? Broadly speaking, it has no

1. A. L. Lowell Government of England, Volume I, page 26.

political power, and yet in Bagehot's words it has 'the right to be consulted, the right to encourage, and the right to warn'. In simple words the Crown has the right to be kept informed of the political situation abroad and at home and to converse with its Ministers.

In the legislative sphere the assent of the Crown is necessary to bills which have been passed by Parliament to make them valid. But can the Crown refuse its assent? It has not been refused since 1707. And now the established convention is that the Crown can not refuse, which means that in respect of bills which have duly passed through the House of Lords and the House of Commons the Crown is no more than a rubber stamp. On several occasions the Crown has threatened to use the veto power if its policy were not adopted, but such threats were made good many years ago. On the other hand the Ministers themselves have challenged the Crown to use its veto power on several occasions. For example, in 1856 Lord Russel's foreign policy with regard to Italy was stoutly opposed by Queen Victoria and Russel replied: ".....He must offer to your Majesty such advice as he thinks best adapted to secure the interests and dignity of your Majesty and the country. He will be held by Parliament responsible for the advice. It will be always in your Majesty's power to reject it altogether."

In the Judicial sphere the King is the fountain of justice; he can not interfere in the process of prosecution, trial, sentence and other incidents of the administration of justice. There is only in one branch of justice that one sees a vestige of royal authority, and that is in the prerogative of mercy, the power to pardon those who have already been tried and convicted. This prerogative is exercised by the Home Secretary, but because of a convention that the Crown should be informed of the things to which it is expected to give its signature, the Crown can exercise the right to question the advice tendered by the Home Secretary. Thus one may say that the King of England reigns but does not govern. Whatever power the Crown has it is secured by the co-operation of three elements, the allegiance of the people, the personality of the King or Queen, and the personality of Ministers.//

The Crown and the People. If the allegiance of the people is strong to the Royal Family, no cabinet would lightly offend a people in their loyalty to the Crown. The Press plays an important part in the relations between the Crown and the people. The social prestige enjoyed by the Royal Family in England is enormous and the members of the Royal Family are in constant demand for opening hospitals, laying foundations of school buildings, city halls, sewage farms, etc. The Royal Family is never out of the public eye. It never dies. The King and Queen and their children are surrounded by a social circle to which direct contact with the Royal Family is the mark of the highest social prestige. The art of modern photography has acted like oxygen to the institution of monarchy.

The Press relates its superlative abilities, demonstrates its all-embracing interest in every thing which leads people to believe in the supernaturalness of the monarchy. Another factor which has contributed to the popularity of the monarchy in England is that the Royal Family is associated with victory. The nation has seen that the Royal Family has successfully led the country through wars. No people tolerate a sovereign who brings defeat and disgrace.

The King and the Cabinet. The Cabinet is a body which decides policy and which is then carried out by other branches of government. It is a unit in its relation to Parliament as well as to the King. But its decisions must have the approval of the King. The minutes of the Cabinet proceedings are promptly supplied to him, but it is mainly the duty of the Prime Minister to keep him fully informed of all major matters. Before the cabinet secretariat was created the Premier used to write a note of the decisions of the Cabinet, but now a report of the proceedings is sent to the King.

The Cabinet is a unit after discussion, but there can be no doubt that there are divergent views. The King would like to know differences of opinion in the Cabinet because this will increase his power over the Prime Minister. But how far these differences should be allowed to be known to the King is another problem. Almost every King has his secret agents in the Cabinet and these differences are allowed to leak out either by design or neglect. Mr. Gladstone was of the opinion that the Prime Minister should not counteract the work of his colleagues by letting the sovereign know their differences. It is considered beneficial to-day if the King is frankly informed of the differences because it is said that his influence may be used by the Prime Minister to secure from his colleagues the acceptance of his view point. But there is a disadvantage also. There is the danger of the sovereign becoming a partisan and definitely taking sides. Therefore in the larger interest of good government in England it is better for the cabinet to act as a unit, though individual members can not be prevented from carrying news to the King. For the working of the institutions of monarchy and the Cabinet it may be said that both have been able to steer the ship of state successfully and smoothly though there have been occasions when the relations became strained—abdication of Edward VIII—but good sense prevailed on both sides and the co-operation of the King and the Cabinet to-day makes England one of the best, if not the best, governed country in the world.

Reasons for the survival of Monarchy in England. Many foreigners are often puzzled and ask in wonder why an institution which seems almost to have outlived its usefulness has not been abolished. But the monarchy in England serves many useful purposes, and the influence of the monarch on the course of public affairs may be quite substantial. Monarchy in England is a strong and so far as can be foreseen, a permanent institution. Even during the chaotic years 1909—11, when the English nation was aroused as never before, upon

questions of constitutional reforms no political programme attacked monarchy. In fact every scheme of reform took the perpetuation of monarchy as an integral part of the English governmental system. In the general bombardment to which the hereditary House of Lords was subjected it is significant to note that hereditary kingship was wholly spared.

The reasons for this escape and sparing are numerous as well as complex. They partly arise from the fact that English monarchy is an old, very old institution. The inherent conservatism of John Bull, though allows him to regulate and modify it now and then, still cautions him from doing anything revolutionary or radical in character as to destroy it.

At all critical occasions in the life of England monarchy has owed its very existence to this conservatism of John Bull—Restoration of 1660, Revolution of 1688.

But to-day monarchy rests upon a stronger foundation than the mere whim of the Englishmn. To-day it is an integral part of the English constitutional system, because it fulfils specific ends which are recognised to be of great importance and almost indispensable.

The King is a visible symbol of the unity of the English nation as well as of the British Commonwealth of Nations.

The successful working of the Cabinet system requires some central and detached figure which is provided by the presence of the King and the part which he plays in the working of the cabinet system.

Monarchy survives in England because it has convinced the English people by its conduct that it is not necessarily incompatible with popular government. If it had proved a hinderance to democratic progress it is not possible to think that all the forces of conservatism and tradition would have been able to keep it. The uses of kingship in England according to Edward Jenks may be summed up as follows :

Further the monarchy supplies a real and personal interest for the people in the proceedings of the government. The monarch is above parties and detached. Ministers are birds of passage but the monarch has seen more than one ministry come in and go out of office and thus possesses secret springs of inside information. His influence may prove really useful to the nation in critical periods.

In addition to the above there are the functions of the King what Bagehot called " dignified functions." These functions of the King are far more important than his governmental functions. Government does not simply mean the securing of efficiency and loyalty in the public services. Again it is not 'just a matter of giving orders and enforcing obedience.' Government requires voluntary co-operation of all sections of the people—rich, poor or middling. Not only this, it is to be remembered that democracy is a government not only by the people but for the people as well. And if it is to work successfully individuals should feel a ' personal responsibility for the collective action.'

It is pointed out by writers that 'the state functions more easily if it can be personified.' The monarch is such a symbol and such a personification in England. It is maintained by some English writers that an elected president, like that of France or America, is no good substitute for a King who occupies his position by right of inheritance. An active politician, as the American President, is considered much less than a substitute. The Englishman can curse and damn the government and cheer his King.

It has been pointed out that democracy is not merely cold reason and calculation in government. It needs display of colour and there is nothing more impressive and effective than the royal purple in England and imperial scarlet for the Empire. The royal family must keep the imagination of the people tied to what they are doing in the field of non-governmental functions.

QUESTIONS AND TOPICS.

1. Discuss the position of the King in relation to the Cabinet.
2. What are the powers of the Crown and how are they exercised ?
3. Why monarchy survives in England ?
4. What is meant by prerogative powers ?

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CHAPTER 11.

THE JUDICIAL SYSTEM

The first fact which must be observed about the legal system in the United Kingdom is that no one system covers the whole country. According to the Act of Union, 1707 Scotland is guaranteed her separate and different system of law and law courts; the Act of Union with Ireland, 1800, extended to that country the same favour.

The second fact to be observed is that in England no distinction is recognized between ordinary law and administrative law. There is one law for all and all are subject to one law.

The third fact to be noted is that the English judicial system though very complicated is unified and integrated.

Finally all judges and judicial officers are appointed nominally by the King, actually by the Lord Chancellor, or on his recommendation. The appointment of judges is for good behaviour and removals can take place only on the joint address presented by Parliament to the King. This gives balance to the English constitution and secures independence and impartiality of the judiciary in England.

The Lowest Courts. The lowest courts for the administration of justice are the courts of the justices of peace and stipendiary magistrates. The justices of the peace serve in an honorary capacity, but the stipendiary magistrates receive regular salaries or stipends from their respective jurisdictions; this accounts for their title. Justices of the peace function within their respective counties; stipendiary magistrates, also called recorders, function in London and all the urban districts and larger boroughs. They are appointed by the Home Secretary in the name of the Crown and are barristers of seven years' standing. Their jurisdiction extends over the same classes of cases as that of the justices of peace; but they have some additional powers also.

Justices of the peace are appointed by the Lord Chancellor on nomination by the Lord Lieutenant of the county. They are appointed for life. The country as a whole has about twenty thousand justices of the peace, but about half of them never take oath of office and therefore the actual judicial work is done by about ten thousand of them. Women are eligible to the office. Practically all justices of the peace are men without any legal training; they are taken from all social classes and professions. But the courts have each a lawyer clerk who is expected to be thoroughly conversant with the statutes under which the justice of the peace acts.

Jurisdiction. The jurisdiction of justices of the peace and stipendiary magistrates extends over petty misdemeanours.

They can not fine more than twenty shillings or sentence for more than fourteen days. Such cases may be disposed of without a jury trial Cases which are more serious are tried by a court called a Court of Summary Jurisdiction consisting of one stipendiary magistrate or two justices of the peace. When two justices are acting, it is called a court of petty sessions. These courts may impose maximum fines ranging from £50 to £100 or even to £500 in certain specified cases, or they may convict upto six months, or in a very few cases, a year. In case an offence is punishable by imprisonment for more than three months, the accused may be tried by a jury, but in the majority of cases the right to trial by jury does not exist. In every conviction the right to appeal to a higher court exists.

Court of Quarter Sessions. Appeal from the lower courts may be taken to the court of quarter sessions for the borough or the county. In this court, cases are tried afresh without a jury. A county court of quarter sessions is a quarterly meeting of all the justices of peace in the county qualified to act as such and who wish to attend. Two justices constitute a quorum. Certain boroughs have a separate court of quarter sessions in which a lawyer of five years' standing, a recorder, is the sole judge. In London a central criminal court instead of a court of quarter sessions, holds terms of court twelve times a year.

The court of quarter sessions possesses original jurisdiction also in cases of more serious offences than those which come before the lowest courts. In fact great majority of serious crimes are tried in this court, while capital cases, perjury, forgery, libel and bribery are reserved for trial in the assizes. Prosecution in the Court of Assizes starts with a case filed with a stipendiary magistrate or justice of the peace, who acts merely as an examining magistrate to find out if a *prima facie* case exists. If the case exists, no trial takes place but the accused is held to await the action of the grand jury. If he is indicted by that body he is tried by a jury of twelve, and the jury's verdict is final as to the facts ; but appeal may be made on questions of law to the court of criminal appeal.

County Courts. The above are courts of first instance for the trial of misdemeanours and crimes. In civil cases the lowest courts of first instance are the 'County' Courts. England and Wales are divided into about five hundred districts called counties which are different from administrative counties ; therefore to avoid confusion it would be better to call these 'county' courts, district courts. These district courts are grouped into fifty-four circuits, each circuit has one or two County Court judges, who are barristers of seven years' standing, appointed by the Lord Chancellor in the name of the Crown. These judges travel about their circuits holding a court in each 'county' once a month. County courts possess no criminal jurisdiction but are small-debt courts. Their jurisdiction extends over law suits involving not more than £100. Their jurisdiction in equity cases extends to cases involving not more than £500. Appeals against their decision may be taken to the High Court

of Justice. Each of these county courts has a registrar who acts as a sort of assistant judge. Both judges and registrars are paid by the government.

The Supreme Court of Judicature. At the head of the courts described above is the Supreme Court of Judicature created by act of Parliament in 1873—1875. The Supreme Court of Judicature now consists of more than thirty judges. They never sit as a body but do work in two great divisions and several subdivisions. Members of the court may be transferred from one division to another. The court is divided into two parts which are really two distinct courts :

1. The High Court of Justice.
2. The Court of Appeal.

The High Court. The High Court of Justice possesses both original and appellate jurisdiction in civil cases. Mainly it is a sort of supreme court sitting from time to time in London and in about sixty towns in England and Wales. It consists of :

1. The Lord Chancellor ;
2. The Lord Chief Justice of England ;
3. The Master of the Rolls ;
4. The President of the Probate, Divorce and Admiralty Division and

22 Puisne Judges.

The High Court does not sit as a single body but acts in three divisions :

(*a*) The King's Bench Division,

(*b*) The Chancery Division,

(*c*) The Probate. Divorce and Admiralty Division.

The King's Bench Division is presided over by the Lord Chief Justice of England, the Chancery Division is presided over by the Lord Chancellor, while the Probate, Divorce and Admiralty Division has its president judge. The work of the last two divisions is transacted almost wholly at London. The King's Bench Division handles the great majority of cases coming to the High Court.

The Court of Appeal. The Court of Appeal exercises a general appellate jurisdiction in civil cases from the decisions of other courts. Every order of judgment of the High Court may be reviewed by the Court of Appeal. It consists of the Master of the Rolls, eight (since 1938) judges called Lord Justices of Appeal. In addition the Lord Chancellor and the presidents of the three divisions of the High Court may also sit. The Lord Chancellor is the president of the Court of Appeal, but in practice Master of the Rolls performs that duty. Appeal from the decisions of the court may be taken to the House of Lords.

The Court of Criminal Appeal. The Court of Criminal Appeal was created in 1907 by the Criminal Appellate Act,

1907. It consists of Lord Chief Justice and the judges of the King's Bench Division. It must consist of an uneven number of judges, three is the quorum ; in practice it usually consists of the Lord Chief Justice and two puisne judges. Its decisions are final unless certified by the Attorney-General as involving an important question of law when further appeal lies to the House of Lords but this is discouraged.

The House of Lords. Appeals in any civil case, and within narrow limits, in criminal cases may be carried to the House of Lords. The House of Lords is the final court of appeal for the whole of the United Kingdom. To do appellate work the House of Lords must consist of at least three members from among the peers, (who hold or have held high judicial office), the Law Lords and the Lord Chancellors. The lay peers in observance of a convention now firmly established can not take part in the judicial proceedings of the House. The form of an appeal to the House of Lords is by petition, and the hearing is quasi-legislative. The cases are decided by vote.

The Lord Chancellor who is the President of the House of Lords also presides when the House sits as a judicial body.

The Judicial Committee of the Council. The Judicial Committee of the Privy Council was constituted by the Parliamentary Statute of 1833. The Committee in its composition overlaps largely with the judicial personnel of the House of Lords with the addition of Indian (not exceeding two) and Dominion Judges. It hears appeals from India, dominions and colonies. It also hears cases from ecclesiastical courts in the United Kingdom. In cases involving India or one of the dominions the Indian or dominion judges sit on the committee. Carrying appeals to the Committee is very costly and the actual number of appeals is not very large. Although it is a judicial body, its decisions are never rendered in the form of a judgment, but always in the form of 'advice' to the Crown. This advice is invariably accepted and an 'order' is issued from the 'King in Council' embodying the recommendations of the committee in the form of a judgment.

The nature and sources of English Law. The law which the courts of England and Wales administer is classified into three main divisions : common law, statute law, and equity.

Common law is the product of custom rather than of legislation and mainly owes its existence to the operation of what lawyers call 'stare decisis'– the principle that a decision of a court shall set up a presumptive basis of action in all parallel cases arising subsequently and specially when the same decision has been repeatedly rendered or affirmed over a sufficient period of time. The rules of common law are fundamental, the laws of Parliament incidental, they assume the principles of common law.

Statute law is the enacted law. The revolution in economic and social conditions in the modern age has necessitated modifications in many branches of the common law adding

many matters unknown to it. Statutes have cut deeply into the common law; but the basic principles underlying the statute law can be traced back to common law.

The third kind of law administered by the courts in England is known as the rules of equity. These rules of 'equity have developed as a ' sort of supplement or appendix to the common law.' They exist for the purpose of rendering justice in cases where no adequate remedy existed under the common as well as the statute law. The equity rules were at first administered by the Chancery Court.

In conclusion it may be pointed out that yet no separate system of administrative courts or administrative law exists in England, though during the last twenty-five years England is moving in thát direction as has been discussed in the preceding pages.

QUESTIONS AND TOPICS

1. Describe the organization and working of the Supreme Court of Judicature.
2. What is meant by (*a*) *stare decisis*; (*b*) rules of equity and (*c*) statute law.

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CHAPTER 12.

LOCAL GOVERNMENT

Introductory. Local government in England is as old as the hills. In that country most of the social services are administered by local authorities. In its origin it was perhaps more efficient than the central government. The real purpose of local government is to make the country a better place for people to live in. Without the institutions of local government civicism and civic consciousness will be absolutely absent in the people. These are the institutions which train people in their duties of citizenship and form the strength of a free nation. It is due to the presence of these institutions among them that the English are a highly politically conscious people in the world.

Its Evolution. The present system of local government in England is not the result of a revolution or a single act of Parliament, but is the outcome of a series of acts passed by the Parliament since the Anglo-Saxon times. But the modern period of development began with the Reform Act of 1832. The first grant, in 1833, to education, the 1834 Poor Law Amendment Act, and the Municipal Corporation Act, 1835, laid the foundations of modern local authorities in England. Following the Franchise Act, 1884, the Local Government Act, 1888 established elective councils for local bodies also. The Act of 1894 created and unified urban and rural districts in place of numerous kinds of special districts. Finally the Local Government Act, 1929 marks the culminating point of the process of reform in the matter of local government in England. Thus the system of English local government created and modified by the acts constitutes these present local government organization in England.

Present-day Divisions of Local Government. There are four main areas of local government in England, *viz* ;—

(1) The County.

(2) The District—urban and rural.

(3) The Borough.

(4) The Parish.

At first the country is divided into administrative counties—62 (as on December 1, 1937). These counties are sub-divided into rural (470) and urban (602) districts which are again sub-divided into parishes (about 11,100) ; groups of parishes are formed into poor law unions. An area which has been granted a municipal charter is called a borough and some more populous boroughs are called county boroughs.

County Administration. There are sixty-two administrative counties for purposes of local Government. They are of

unequal size. The county of London is the largest. Fourteen of these counties have a population of less than 100,000.

The County Council. As its governing body each administrative county has a county council which consists of two elements : councillors, and aldermen. Councillors are elected from single-member districts in which the county is divided by the council. A person to be eligible for membership must be a qualified voter, owner of a certain amount of property or must pay a certain amount of taxes. Ministers and peers are also eligible if they can satisfy the property, or tax-paying requirements. The franchise is more restricted than in parliamentary elections, procedure prescribed for the nomination of candidates is practically the same as in the case of candidates for the House of Commons. Elections are held early in March. The county councils vary in size according to the population of the county. The councillors are elected for three years ; the newly elected councillors choose a number of aldermen equal to one-third of their total number. Aldermen may be selected from among the councillors or outside, but they must be persons qualified to sit as councillors. The aldermen are selected by six years. one half retiring every three years. Together the aldermen and the councillors constitute the County Council. The County Council meets usually four times a year : meetings are presided over by a chairman elected by the council either from among its own members, or from outside persons who fulfil franchise qualifications.

Work of the County Council. The County Council has very useful and important functions to perform. These include certain direct functions and also supervision over other local authorities. Some of the more important direct functions are : the preparation and enactment of the county budget, the levying of county taxes, making and repairing county roads, provision of houses for the working classes, maintenance of reformatories, lunatic asylums and industrial schools etc. It is also charged with the administration of the Poor Law. The County Council exercises control over parish councils and rural district councils.

The council does most of its work by committees. Twelve of these are required by law and are therefore called the Statutory Committees. The council appoints all administrative officers which include a treasurer, one or more surveyors, health officer, inspectors of weights and measures, sanitary inspectors etc. The clerk of the peace is the ex-officio clerk of the county council.

The county council derives its finances mostly from rates, but it also receives some contribution and grants for specific purposes from the central government.

The District Administration. Midway between the county council and the Parish council is a division of local government called the district. There are urban as well as rural districts. The distinction between rural and urban districts is based on population, urban districts being more thickly populated than rural

districts. In view of their greater population urban districts possess greater powers than the rural districts.

Rural and urban districts are governed under the Local Government Act, 1894. Each—rural or urban—district has a district council which is the governing body for the district. The size of the district council is determined by the county council and varies from district to district. But it must include at least one councillor from each parish with a population of three hundred. Members are elected by persons who possess local government franchise, the election is for a period of three years one-third retiring annually, although if the county counce allows the terms of all members expire at the same time. Both rural and urban district councils have some common powers, for example, performing public health functions, acting in the matter of town planning and housing and granting certain licences. They may also levy 'ground rate' or tax to meet their responsibilities. In addition to these common powers the rural district councils have certain others. For example, they are required to provide for a sufficient water supply and are empowered to delegate sanitary powers to the parish council. In cases where the boundaries of rural districts and rural parishes coincide, they act, ex-officio, as the parish council.

The district council elects its ownchairman,—may be an outsider if he possesses qualifications required of members of the council. It meets at least once a month. Its work is done mostly by committees in which may be included persons who are members of the council. All the acts of the committees require confirmation by the council. The council elects a health officer, a sanitary inspector, a surveyor, a clerk, a treasurer, a tax collector and such other officials as the needs of the larger districts may require.

Boroughs. In some respects the most important units of local government in England are the municipal boroughs. They vary greatly in size. Now a borough charter is not granted to any place with less than fifty thousand people. The important point about a borough is not its size or even its importance but that it has been incorporated under a charter granted by the Crown, and as a result of which it enjoys greater powers than any of the urban districts. There is no uniformity in the powers of each borough; parliament is not bound to treat all cities alike and it may grant powers to one city not conferred upon others. Whatever the extent of powers enjoyed by a borough they are derived from the common law, from the Municipal Corporations Act, its amendments, from other general parliamentary statutes or from 'order' issued by administrative departments of the central government.

The Town Council. The governing authority in a borough is vested in a Town Council composed of councillors, aldermen, and a mayor. The size of the council is fixed by the borough charter which lays down the number of aldermen to be one-third of the councillors. Only councillors and two auditors are chosen by direct popular vote. In smaller boroughs

councillors are elected on a general ticket while larger boroughs are divided into wards and a certain number of councillors is assigned to each ward. Residence in the ward is not necessary. The councillors are elected for three years, one-third being elected every year in the beginning of November.

A newly elected borough council chooses from among its own members or from outside a number of aldermen equal to one-third of the number of councillors. Aldermen are elected for six years one half retiring every three years. They enjoy a little greater prestige than councillors; but their powers are the same and together with the councillors they constitute one body. The council elects a mayor for one year, the powers of the mayor are ornamental. The mayor, the alderman and the councillors all serve in an honorary capacity.

The meetings of the council are held weekly or fortnightly, and in smaller boroughs monthly; provision is made whereby special meetings may be held whenever required by business. The council passes all necessary bye-laws, or ordinances, to protect health, life and property. Its ordinances require the sanction of the central government before they become valid. It has important administrative powers. The chief administrative officers of the borough are the town clerk, the town engineer, the fire chief and the medical officer of health.

County Boroughs. The boroughs described above are municipal boroughs. Within their boundaries county authorities can exercise their authority in connection with county matters. But those places which have a population of more than 75,000 are exempted from the jurisdiction of the administrative county by private act of parliament; such boroughs are called County Boroughs. They are not represented on the county council, and county authorities have no jurisdiction within the limits of such boroughs. But the system of government is the same in both municipal and county boroughs. The only difference is that county boroughs enjoy more extensive powers than are enjoyed by municipal boroughs.

The Parish. On the rural side the smallest unit of local government is the parish. A parish with a population of three hundred or more can have a parish council. In the smaller parishes there is a primary meeting of all the inhabitants—women and lodgers. The functions of the parish council include the appointment of the overseer of the poor, administration of charity funds of the village, maintenance and repair of foot-paths, recreation grounds and lighting parish roads. They may also provide libraries, work-houses etc.

The Government of London. There is not one London but several. The old 'City of London' is an area of about a square mile in the heart of the metropolis. Its permanent population is only about thirty thousand, but it is a centre of business for almost the whole world. The system of local government of the City of London dates back to the Middle Ages. All authority resides in the 'Corporation of the City of London.' The Corporation is composed of the body of free-

men who have paid the small fee required of those who wish to have the right to vote at city elections. Other local authorities have no jurisdiction within the corporate limits. The corporation maintains its own police force.

The City is governed through a mayor and three 'courts' (councils). The Court of Aldermen consists of twenty-six life members and the local mayor. This court may be said to be a sort of a second municipal chamber. It has no great powers. It elects the lord mayor in which act its choice is limited to one or two senior aldermen nominated by the Court of Common Hall. The lord mayor enjoys great social prestige but no actual powers. The Court of Common Council (not the Court of Common Hall) is practically the governing body of the city. It consists of 233 members, 206 of whom are councillors elected by wards, the remaining 27 being the aldermen mentioned above and the lord mayor. The lord mayor presides over the meetings of both. The Common Council has almost the same powers as are possessed by borough councils.

The Court of Common Hall is an assembly consisting of the Lord Mayor, the aldermen, the sheriff, and all the bussiness men of the City. Livery men are citizens who, by paying certain fees, have the right to dress on ceremonial occasions i n the ancient uniform of the seventy or more older craft guilds, or livery companies.

The County of London. The government of the area immediately surrounding the old city of London is organized in such a manner that the various local units exercise their authority over strictly local markets, while a higher central authority deals with larger problems. The local units are the Metropolitan Boroughs, and the central authority is the County of London. The county of London is under the control of the London County Council, popularly known as L. C. C. Constituted under the Local Government Act, 1888, it is elected by the rate-payers of the area and is composed of a chairman, 20 aldermen and 124 councillors. The councillors are elected for three years while aldermen hold office for six years. This council performs the same functions as are performed by a county council except that it does not control the metropolitan police which is controlled by the Home Secretary. It transacts business through committees of which there are quite a number—the Finance Committee, the Education Committee, the Highways Committee, the Housing and Public Health Committee, etc.

The county of London is divided into twenty-eight metropolitan boroughs. Each of these has its own mayor, aldermen, councillors and a host of officials. The councils do not perform any very important duties and have less financial independence.

There are many other boards or authorities which have been created to meet the special needs of the area. The Metropolitan Water Board (1902) controls water supply: the

Port of London Authority looks after the docks; and the Traffic Trust takes care of transport.

Control of the National Government. All local government authorities in England work under the supervision and control of the national government. Though local bodies and authorities enjoy the power of making bye-laws, their working is governed by statutes passed by Parliament from time to time. The national government exercises its supervision and control over local government authorities through the Home Office. the Board of Education, the Board of Trade, and the Ministry of Health. These departments exercise wide powers of appointment, control, examination and sanction, but these powers are not used so often, though due to the present war many of the privileges of the local authorities have been suspended; and generally speaking the national government is more eager to advise, guide and help than to control, or interfere.

QUESTIONS AND TOPICS.

1. Describe the organization and activities of (*a*) the London County Council and (*b*) the Urban District Council.
2. What are the various units of local government in England?

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CHAPTER 13.

THE GOVERNMENT OF FRANCE.

History of the Constitution. The Republic of France is young—very young as compared to monarchical England. She is only sixty-five years old—and what are centuries in the life of a nation ? To-day she is suffering from a paralytic stroke as a result of the shock which she has received at the hands of the robust Hitler. But she is an old nation with a high civilization, a hoary past, a high idealism, and richer in political experience if not in wisdom than many other nations of the world.

The foundation of the present French Republic in 1870 was the result of the disaster at Sedan, when the French lost all plus their emperor to the Germans. Such appalling disasters resounded throughout the world. France no longer had an army ; one had capitulated at Sedan ; the other was shut up in Metz which also capitulated and the chronicler—having no presentiment of 1940—recorded the greatest capitulation in the history of the civilised nations. The situation was desperate ; the French emperor wrote to Paris, ' The army has been defeated and is captive ; I myself am a prisoner. ' Being a prisoner he could not be head of the government of France ; and as Thiers said there was a ' vacancy of power '. Hastily on September 4, 1870, the Legislature was convened. But it had no time to deliberate. The people in their hour of need recalled how they had been saved from invasion in 1792 by a rebublican form of government : excited and panic-stricken they invaded the hall shouting, " Down with the Empire ; Long live the Republic ! " So the Republic was at once proclaimed, but this was no time to debate plans for a constitution, it was time to fight or perish. Government of National Defence was organised which was the actual government of the country during the remaining period of the war. This government assumed the task of driving the German army from the French soil. ' We will give up, ' said Jules Favre, Minister of Foreign Affairs, ' neither an inch of our territory nor a stone of our fortresses.' The conduct of the war was taken over by Leon Gambetta, who by his immense energy, his patriotism and eloquence was able to raise new armies, but insurgent democracy proved powerless against a well-organised State. Even the gallant efforts of Gambetta could not save the capital, and a National Assembly met at Bordeaux to determine the question of peace and war. It accepted the terms dictated by Germany. The Assembly had received no mandate to frame a constitution. It was composed of 750 deputies of which 400 were Royalists. In the face of the enemy occupying France the gravest need of the country was to maintain unity and though the Royalists enjoyed a majority they dared not defy the strong Republican minority. Knowing the consequences of the civil strife all parties agreed to a politi-

cal truce and decided to postpone for a time 'the decision of France as to the definite form which her Government should take.'

It was fortunate for France that this Assembly had Thiers —a statesman of signal capacity, wise moderat on, a former minister and a historian—as a member. He was the most respected person in France at that time and the Assembly entrusted him with the executive power to guide the ship of State. He was appointed head of the State without fixing any term for the duration of the office. He was constantly pressed to introduce the parliamentary system by permitting his ministers to assume responsibility for his acts, to which he did not agree. He held himself personally responsible to the Assembly for the conduct of government, took part i debates and declared that he was prepared to resign any time the majority wanted him to do so. This state of affairs continued for two years when Thiers resigned as a result of a hostile vote. His successor Marshal MacMahon was elected for seven years, and as he was not a member of the Assembly his cabinet became responsible to the Assembly in the parliamentary sense. Though the chief executive was now elected for a fixed term, still there was neither a constitution nor a permanent organization of the government. Due to the strange condition of politics this provisional arrangement was continued. The Royalists were in majority in the Assembly but they were hopelessly divided among themselves. There were three claimants to the throne, but there was only one throne and it could not have three occupants. The rivalry beween the three sections of the Royalists, the Legitimists, the Orleanists, and the Imperialists ruined the cause of monarchy. At one time it appeared that the Legitimists and the Orleanists would combine and the Comte-de-Chaubord might ascend the throne of France. But the stubbornness of the Comte to sacrifice the throne rather than accept the tri-colour flag made the position of the Royalists still more difficult. Under such circumstances the restoration of monarchy was manifestly impossible, and so this assembly of monarchists set to work to establish a republic. The formal recognition of the Chief Executive as the President of the Republic (January 30, 1875) was 'a virtual adhesion on the part of the Assembly to the Republican ideal'. In 1833 it was expressly enacted that 'the Republican form of government cannot be made the subject of a proposal for revision.' The object of this provision was to prevent the destruction of the Republic by constitutional means. This placed the Republic outside the arena of political strife.

Form and Character of the Constitution. France is a country with the forms of a republic, the spirit of an empire and the institutions of a monarchy. The reason for the above is that in its final shape the Republican constitution was the work of no single party, but of all: it was essentially a compromise. It has preserved the social organization as the legacy left by the Revolution; it has borrowed centralised administrative institutions from the empire while the

actual distribution of political power exhibits a compromise between popular sovereignty and autocracy.

The Constitutional Laws. The French Constitution is not a simple systematic or a detailed legal document. There are at least three constitutional laws which form the foundation of the present French Constitution. These three laws are:

(1) Law of February 25, 1875. It provides for the organization of the powers of the state;

(2) Law of February 24, 1875. It provides in detail for the organization of the Senate; and

(3) Law of July 16, 1875. It fixes the powers and relations of the organs of state among themselves.

Strictly speaking these are the laws providing the basis of the French constitution but in addition to these two Revisory Laws were passed in 1879 and 1884, and a number of organic laws have also been passed 'the purpose of which is to implement the constitution.'

Thus one can say that the French constitution consists of separate laws of various pieces which were never intended to provide a material from which a systematic or harmonious structure would be erected. For example, no one of these fragments contains any provisions for the organization of French judiciary with the exception of the High Court of Justice.

The constitution does not make any provision in regard to public finance though it gives some privileges to the Chamber of Deputies.

The constitution lays down the principle of universal suffrage, bur contains no regulation as to the mode of suffrage.

Though the French constitution is a written one, yet it does not contain any general principle outlining citizen's rights. In view of this it becomes difficult for one to determine the basis of French public law, though this basis is to be found to a large extent in precedents. The French Bill of Rights is more or less definitely apparent in the individualistic and liberal principles of the Revolution, the Declaration of the Rights of Man, 1789, etc.

Precedents have also been relied upon in the actual working of the constitution which is written. For example, it is a written law of the constitution that the President can dissolve the Chamber of Deputies with the concurrence of the Senate. To-day it is an unwritten law of the constitution that the President shall not dissolve the Chamber. Custom here has become so binding that the dissolution question has been repeatedly raised in recent years but has never been settled.

With all these drawbacks the constitution worked for the longest period in the political history of France. It endured for more than sixty years. It survived the tremendous test and strain of the last world war. It multiplied the area of the French

Colonial Empire by ten. What was the secret of its success ? It was non-partisan; not being a child of any one party all parties tried to work and preserve it.

Amendment of the Constitution. There are two different ways in which amendments may be initiated *i.e.*, by the president—actually by the ministry—or by individual deputies or senators. Whether the proposal comes from the ministry or from the members of the Chambers, the next step is for the two chambers separately to decide by a majority of their entire membership, that such a revision is desirable This being done the two chambers repair to Versailles to meet there in joint session. This joint session is called the National Assembly—in law it is quite distinct from the two houses composing it. If the National Assembly approves the proposed amendment by an absolute majority it is adopted and that ends the matter. But the National Assembly is at liberty also to consider and adopt other amendments not voted upon previously by the two houses acting separately. Amendments do not require any popular ratification. Thus it may be said that the French Constitution is not really a rigid constitution because it may be amended by the same persons who make ordinary laws, simply by observing a different organization and procedure. Thus amendment of the constitution is a far more easy process than it is in America. The National Assembly possessed an unrestricted right of amendment upto 1884 when by an amendment it was laid down that no amendment can be made in regard to the republican form of government. But from a strictly legal point of view, the National Assembly, if it pleased to do so, might eliminate even this limitation.

The French constitution has been amended only on three occasions—in 1879, removing the seat of government from Versailles to Paris, in 1884 when four amendments relating to various matters were adopted, and in 1926, creating the national sinking fund, etc.

Lastly the French Constitution of 1875 was abrogated in so far as its provisions were incompatible with the three Constitutional Acts signed by Marshal Petain on July 12, 1940, laying down the new regime in France which came into being after the signing of the Armistice between France and Germany on June 23, 1940 in the Forest of Compiegnie. The new constitution of France is described in Chapter 21.

QUESTIONS AND TOPICS.

1. Discuss the form and character of the French Constitution ond account for its success.

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Chapter 14.

THE FRENCH PARLIAMENT.

The French Parliament is a single authority composed of two assemblies normally deliberating separately. The upper house of the French Parliament is called the Senate and meets in the Palais Luxumbourg, while the lower house is known as the Chamber of Deputies and meets in the Palais Bourbon. The decision of these two Chambers combined expresses the will of the French Parliament.

The National Assembly. When the two Houses of Parliament meet for the amendment of the constitution they form a single deliberative assembly which is called the National Assembly.

The Chamber of Deputies and the Senate also unite for the election of the President of the Republic; they then form only an electoral college and hence can not discuss, deliberate, decide or conduct any other business except that for which it is summoned.

Membership. The French constitution does not take any serious precautions to ensure the competence of successful candidates. Except for the age limit which is twenty-five for the Chamber and forty for the Senate, one may say that it is hardly more difficult to be a candidate than an elector. The first requisite is that the candidate must possess a right to vote. All electors qualified to vote are required to register. But there have been examples of men who neglected to get registered, and who only began to show an interest in politics the day they announced their candidature. The constitution does not lay down any special condition of intellectual capacity and strangely enough the feeble-minded or the spendthrift who has been temporarily deprived of his vote is eligible for parliament though ineligible for municipal council. But the moral and patriotic standards required of a candidate are higher than those required of an elector. For example, a foreigner comes to possess a right to vote as soon as he is naturalised, but can not stand for parliament unless he has been naturalised for ten years.

There is also a guarantee of morality. A bankrupt recovers his right to vote after three years, but can not stand as a candidate without an official discharge.

Other conditions of membership. The above conditions are only personal; there are other conditions also which a candidate must satisfy. These conditions are inspired:

1. by the wish to defend the Republic, *e. g.*, members of families who have ever governed France are ineligible;

2. by requirements of military discipline : soldiers though registered can not stand as candidates ;
3. by anxiety to avoid undue and illegal influence upon electors ; officials can not stand as candidates in areas in which they exercise official authority.

Independence of Members of Parliament. The independence of the members of Parliament is secured by the constitution in various ways. Members are paid a fairly handsome salary (15,000 franks), enjoy free passes on railways. Officials who are elected lose their office completely and not merely vacate it for a period. Conversely a member of Parliament who accepts office loses his seat. But there are certain officials in whose case this rule does not operate ; the reason being that either their office is very important, or because its sphere of influence is so extensive that their presence in the Chamber is considered desirable : these officials are the ministers and under-secretaries of state, the Prefects of Police, the Prefect of Seine, etc.

Members of Parliament are immune from proceedings in criminal or civil courts for any acts done in the exercise of their duty ; *e. g.*, a member can not be proceeded against for a speech which he has delivered in the Chamber, and if under the same conditions he utters the most baseless libels or violent calumnies against a particular individual or society, the poor victim will still not be allowed to sue the person for damages. Members can not be proceeded against on a criminal charge during the session of the legislature except with the consent of their respective chambers.

The Chamber of Deputies. The lower house of the French Legislature is called the Chamber of Deputies and like the lower house in many countries, it has come to possess more power than the Senate. The Chamber has been often blamed for having destroyed the balance of power which the 1875 constitution tried to establish, and for having destroyed it in its own favour.

Composition. The Chamber of Deputies now consists of 618 (1939) deputies. The deputies are elected for a period of four years. This period is considered too short by many who say that for the newly elected deputy the first year is only a year of apprenticeship to learn the technique of work in the Chamber, while the last is devoted to preparing for re-election. The membership of the Chamber elected in April-May, 1936, according to political parties is :—Parties of the Left : Socialists. 146, Dissident Socialists, 37 ; Radical Socialists, 116; Communists, 72 ; Dissident Communists 10. (Total, 381 or 62 per cent.) Parties of the Right : Republican Federation. 88 ; Left Republicans, 84 ; Independent Radicals, 31 ; Popular Democrats, 23 ; Conservatives, 11. (Total, 237, or 38 per cent.)

Election. The Chamber of Deputies is elected on the basis of universal suffrage. But in France universal suffrage does not mean that everybody has a right to vote. Universal

suffrage in France means only manhood suffrage. Women are excluded from the privilege. Therefore it would be more accurate to say that the Chamber is elected on the basis of manhood suffrage. A Frenchman must have the following qualifications to be a voter :

(1) He must be a Frenchman—natural born or naturalised.

(2) He must be twenty-one years of age.

(3) He must be able to satisfy the residential qualification which is residence in any one town or commune for at least six months.

(4) He must not suffer from any disqualifications (already discussed).

It is interesting to note that France has stubbornly remained hostile to woman suffrage than less democratic countries. The reason is not so much the feeling of superiority of Frenchman towards Frenchwomen as the indifference of women towards political questions. But this question of woman suffrage is making headway. The Chamber on May 20, 1919 voted with an overwhelming majority a bill granting women not only the right to vote, but also to seek election. This bill came for discussion before the Senate on November 21, 1922, but was defeated by 156 votes against 134. Again in 1927, 1928, 1929, 1931 and 1932 the Senate stubbornly refused to reconsider the question of enfranchising women. It is instructive to know that woman suffrage in France is advocated by the conservatives, but opposed by the radicals.

What is the reason ? The reason is not merely that Frenchwomen are usually more conservative than men, but that French women as pointed out in Alexandre Berard's report to the Senate, are more attached to the Roman Catholic faith than Frenchmen. And as Frenchwomen outnumber Frenchmen by more than two million woman's franchise might enable the Church to regain its political power. This is not what the Radicals desire. They are determined to oppose any forces which might help the Church to exercise an undue influence on French politics. Be that as it may, but there cannot be any doubt that women would get their right of voting sooner or later and it must not be denied to them.

Manner of Election. Elections in France are conducted on territorial basis. The territorial unit may be the commune for elections to the municipal council, or the canton for elections to the general council and arrondisement or the department for senatorial elections.

In the case of the Chamber of Deputies two territorial divisions have prevailed in turn—the arrondisement and the department. The manner of election of Deputies to the Chamber has been modified several times since 1871. The system known as *scrutin de liste* was introduced in 1871. Under this system each elector votes for as many deputies as the entire department has to elect. In 1876 it was replaced by the *scrutin*

de arrondisement, a system under which each department is divided into a number of arrondisements (divisions), each elector voting for one deputy only. In 1885 *scrutin de liste* was readopted, but in 1889 the uninominal vote was again introduced; in 1919 the *scrutin de liste* with proportional representation was introduced; but on July 12, 1927 France once again reverted to the arrondisement system which is still prevalent.

Present System. According to the above law the arrondisements with a population of more than one hundred thousand are divided into two or more constituencies; the country is divided into single member arrondisements, each elector having one vote and there being one Deputy for each 75,000 voters. All Parliamentary elections are authorised and proclaimed by the President of the Republic. Voting is optional, it is considered a moral duty; but it is facilitated. It is invariably held on Sunday from 8 A. M. to 6 P M., by secret ballot under the supervision of a Commission of Councillors-General appointed by the Prefect of the Department. Ballots are counted in public by tellers who are appointed by the candidates themselves.

Though voting is considered a moral duty, it is optional and facilitated. Frenchmen abstain from voting in large numbers. To remedy this evil various bills have been introduced in the Parliament to make voting compulsory. The latest of them was voted in the Chamber in February 1932, but was defeated in the Senate. Some idea can be had as to the extent to which Frenchmen abstain from voting by the following figures: For example, from 1875 to 1919, 24% voters on the average abstained from voting. In 1919, 30%: in 1924, 20% and in 1928, 16% abstained from voting.

Sessions. According to the Constitutional Law of 1875 the Chamber of Deputies meets every year on the second Tuesday of January, unless the President of the Republic decides to call a meeting earlier. It is further required that both the houses shall remain in session for at least five months. Once the five months of the ordinary session are over the President may close the session. But during the session also it is one of the prerogatives of the President to adjourn the Parliament for not more than a month, but not more than two such adjournments in any one session can be asked by the executive. During the history of the Third Republic, French Parliament has been adjourned during its ordinary session only twice—once in May 1877 by Marshal MacMahon, and the second time in March 1934 by Premier Doumergue. Extraordinary sessions are also provided, *e. g.*, Parliament meets two days after martial law is declared; in this case no convocation is required from the executive. The President of the Republic may also call for an extraordinary session whenever he thinks necessary.

The sessions of the Chamber as well as those of the Senate are public, but visitors are admitted only by ticket

due to the limited seating convenience. But provision is made for secret sessions also. Upon the requisition made by a specified number of members (fifty in the case of the Chamber of Deputies) either house may meet in a secret session. This is not a normal peace-time procedure, but during the last war it was utilised many times to discuss important and delicate matters. The closing of the session of the Chamber does not affect the pending legislation. Bills not voted in the present session will be voted in the coming session.

Internal Organization of the Chamber: The President. The Chamber elects its own Speaker, known as the President who presides at the meetings of the Chamber. The President of the Chamber is an important figure in the Chamber as well as in the national politics. At all formal state ceremonies the President of the Chamber ranks third, the second position being taken up by the President of the Senate while the first belongs to the President of the Republic. The speakership of the Chamber is often a stepping stone to the presidency. In addition to his parliamentary salary the Speaker receives a handsome allowance for secretarial establishment, entertainment and official conveyance. He not only presides over the meetings of the Chamber but recognizes members, interprets the rules of procedure in the Chamber, puts questions to vote, preserves discipline and order in the Chamber while it is in session. If a deputy persists in his unparliamentary conduct and the disturbance continues the President has a right to order his exclusion from the building for fifteen meetings. In addition to this penalty half the salary of a deputy for a period not exceeding two months is also liable to be confiscated.

The French are an impulsive and emotional nation and the maintenance of order in the Chamber is not an easy task. When the Chamber becomes tumultuous—and it often does—the President clangs a big bell. If this fails to produce any effect, the President puts on his hat, (this means a threat to walk out); and even if this fails to bring back sobriety to the Chamber he may suspend the sitting of the Chamber until next day.

Unlike the Speaker of the House of Commons the President of the Chamber is a party man; he favours the party, of course with due regard to fair play, to which he belonged before his election. Again, unlike the British Speaker, he can participate in debate and even vote, but usually it is not done. However, there are two examples in the history of the Chamber when this rule of neutrality has been broken. In the earlier years of the Republic, Gambetta used to leave his presidential chair often, and sway the house with his fiery eloquence and domineering personality. Again on July 17, 1926 M. Herriot, the President of the Chamber quietly left his presidential chair, descended to the tribune, delivered a speech and defeated the Briand Government. Consequently he was called upon to form a new Ministry by the President of the Republic.

The Committee System. The French Chamber of Deputies, like the British House of Commons, has been compelled by its size and increase of work to organize itself into small committees in order to function more efficiently. But the Chamber has adopted this system of standing committees only recently ; it dates from 1910. At present (1938) the Chamber has twenty of these commissions, as they are called. Some of the more important of these commissions are : (1) Foreign Affairs, (2) Finance, (3) Army. (4) Navy, (5) Merchant Marine, (6) Aviation. (7) Labour, (8) Agriculture, (9) Public Works and Communications etc. It must be noted that there exists a close parallelism between the name and functions of the departments or the services of the executive and these commissions. The members of these commissions are chosen by a process of election ; and all party groups are represented according to their strength in the Chamber, Committee assignment is not made by the presiding officer. Each political group in the Chamber is organized, thus it knows the number of members which it is entitled to have on each committee, then it proceeds to elect its representation. A slate of representatives is prepared which is usually accepted and stands for four years.

The Bureaux. There are a few other committees larger than those mentioned above. These committees are made up in an entirely different manner. At the commencement of each session the entire membership of the Chamber of Deputies is divided by lot into eleven committees (bureaux) Every month during the session new allotment is made. The bureaux appoint their own chairmen and secretaries and meetings are held whenever necessary. At the opening of a new Chamber the bureaux examine the election returns and pass upon the credentials of their own members as a prerequisition to the organization of the Chamber as a whole. Formerly their functions included the consideration of legislative measures. This proved unsatisfactory because of the shifting character of the bureaux and led to the adoption of the standing commissions described above. Apart from passing upon credentials and occasionally providing members for special commissions the bureaux have almost nothing to do. The more important business is done by the standing commissions.

The Commissions and Law-making. The commissions play a very important part both in advancing and killing legislative measures. They choose their own chairmen and transact their work behind closed doors ; they hold no open public meetings. But this is negatived in several ways. Firstly the author of a bill is allowed to be present ; secondly the commission invariably holds consultations with the leading opponents and supporters of any measure pending ; thirdly they have to keep a list of members present at every meeting and to file a report of all business transacted. This record can he examined by any member of the Chamber. When a commission decides to report a measure favourably, it designates some member to act as a reporter. Even in the case of a govern-

ment measure it is the reporter and not the minister concerned or the chairman of the commission who has to explain and defend the bill in the Chamber. Usually commissions co-operate with the ministers. But since they are independent of cabinet control, a commission may often prove an ulcer in the flesh to ministers. The business programme of the Chamber is chalked out, week by week by the President in consultation with the chairmen of the standing commissions and the leaders of the different political groups.

Powers of the Chamber. The Chamber of Deputies is almost as omnipotent as the British House of Commons. The actual powers of the Chamber may be classified under three heads ; (1) Ordinary law making powers, (2) financial powers and (3) controlling the executive and administrative branches of the government.

Legislative Procedure and Powers. Legislative measures may be introduced in the Chamber both by members of the government as well as by private members. A bill introduced by the government is called Project de Loi, when by a private member Proposition de Loi When government bills are introduced they are referred as a matter of course to the proper standing committee or if necessary to a special committee. But bills introduced by private members have no such smooth sailing. More often than not they are obstructed at the very outset on the plea that they are opposed to the rules of the house or to the spirit of the constitution itself

The committee to which a bill has been referred may call witnesses from outside the Chamber or may call upon experts from amongst private citizens to furnish the committee with special advice. The rules of the Chamber require that a committee must present a report on the measure referred to it within four months. If a committee fails to do so any private member may call the measure before the house.

After a committee has prepared its report on the bill, it is given a place in the legislative schedule of the house according to its importance or necessity. In special cases the committee may be required to present its report within three days if the measure is considered urgent both by the government and the Chamber.

Usually general discussion of the bill begins within three days after the committee has presented its report to the Chamber. In the first discussion only the general principles of the bill are discussed. Then a vote is taken on the question whether the Chamber wants to discuss the bill section by section. If the vote is in the negative, it means that the bill is rejected. If not, the discussion of the bill article by article takes place. At this stage suggestions and amendments may be made.

Finally the measure as amended or in the form reported by the committee is voted upon as a whole. If the measure receives majority of votes it means that it has passed and is ready to be sent to the Senate.

Since 1926 the right to deliver speeches has been restricted to cabinet members, chairmen and reporters of the committee interested in the measure under discussion, to the authors of the measure and to those deputies who have been designated to speak by their respective groups. Cabinet members may speak as long as they like. The presidents, reporters, authors and designated deputies speak for one hour while members not privileged thus have only fifteen minutes to themselves.

Voting in the Chamber. Votes are taken in the Chamber in one or more of the following four different ways :—

(1) by a show of hands,

(2) by a rising vote,

(3) by a public ballot, and

(4) by a public ballot at the tribune.

The first two need not be discussed ; the last two methods are usually optional or alternative. But in case of money bills or when it is required in writing by a certain number (twenty) of deputies, voting by public ballot is necessary. Ballot boxes are passed about the Chamber, each member inserting a printed ballot, bearing the deputy's name, for or against the bill, after which the votes are counted by the secretaries. Absent members may vote by proxy. Those who vote for absentee members are called Boiters. It often happened that several of the deputies voted for one absentee which often led to the absurd situation in which the total number of votes cast exceeded the total number of members of the Chamber. For example, on February 25, 1930 when the Chautemps Government asked for a vote in the Chamber on a question of confidence, it was found that there were 2000 votes as against 612 deputies of the Chamber.

To remedy these defects and abuses the last method is employed which demands that whenever a certain number (50) of duputies require in writing voting must take place at the tribune. According to this method the secretary calls the roll of the deputies and as the name of each deputy is called he proceeds to the tribune and hands his vote to the secretary, and thus votes are mechanically registered as well as counted.

The law-making powers of the Chamber are co-equal with those of the Senate. All measures to become laws must be passed by both the Chambers.

Financial powers. The constitution does not give any special financial powers to the Chamber. But the great Revolution introduced a number of principles relating to public finance which though not included in the constitution law of 1875 are still considered as integral parts of the constitution. Some of these principles are :

(1) No tax shall be levied except by the people or their representatives ;

(2) Taxes shall be authorized for but one year at a time ;

(3) Public funds shall be spent only with the consent of the nation:

(4) The people's representatives shall every year prepare a plan of expenditure and revenue—a budget.

The principle that all finance bills shall be introduced in the Chamber was borrowed from England in 1814. The procedure is quite simple. Estimates of financial requirements are periodically collected from various government departments by the minister of finance. Then they are minutely examined by the cabinet and the minister after which a statement for presentation to the Chamber is prepared. It is the privilege of the Chamber that the finance bill must always be first introduced there. The minister always introduces the budget with a speech in which he explains the estimates in detail, the general financial position of the country, and his proposals for taxation. The minister plays a leading part in the discussions on the measure in the Chamber. After the minister has finished his introductory speech the budget is referred to the commission on budget. This commission consists of forty members elected by the eleven bureaux. The budget commission is the most important of the twenty commissions of the Chamber. The budget is subjected to a minute and detailed examination by this commission acting through subcommittees. Neither the Chamber as a whole nor the committee are prohibited either by the laws or the legislative rules from raising the sums asked for by the government. They may even add new items, and the question about their right to strike out or reduce items does not arise. Individual deputies show a keen interest and much activity while the budget is pending before the Chamber. They expend much time and energy to raise appropriations specially on the eve of a general election. But in recent times rules have been made which curb these practices in the Chamber. For example under the Berthelot resolution adopted by the Chamber in 1900 no private member may propose an amendment to the budget which would increase existing salaries or pensions or set up new offices or pensions. Even resolutions of this nature are not allowed and the member who desires to bribe or benefit his constituents at the expense of public money must depend entirely upon his influence with the minister or the Cabinet. Though the budget committee is free to reshape the finance measure submitted by the minister, yet it generally acts with moderation and in a spirit of cooperation. Changes are seldom introduced without the minister's approval. The budget consumes from two to three months of five months of an ordinary session of the Chamber. After it has been adopted by the Chamber it is sent to the Senate which body may make further efforts to make changes, but in all such instances the last word remains with the Chamber.

Control over the Administration. The most effective means of control over the government lies in the power of the

purse—in the examination of accounts and estimates and in the voting of the budget. But this is not the only means. The Chamber possesses opportunities for detailed review of the conduct of the administration, for searching and insistent criticism as well as for the punishment of negligence on the part of the government. Leaving the money bills apart, the Chamber in the work of legislation is free to harass cabinets in a very practical way. It can drive them out of office by rejecting or altering important legislative measures sponsored by the government. There are many other ways also provided by the legislative procedure in which the Chamber may check or control the executive. For example, Parliament may require the government to furnish information—documents, statistics, records etc. Further, according to a statute passed in 1910 the government is required to publish every five years a statement showing the salaries of public servants and increases made during the period; another statute provides that two members appointed by each Chamber shall be allowed to examine and investigate conditions in the departments of war and matine. Again the Chamber or the Senate may authorize committees to enquire into executive acts and these committees have the power to compel witnesses to appear before them.

But there are other direct and more effective means of control. The Chamber has borrowed from the British House of Commons what is known as 'the question'. The question may be asked orally if the minister has agreed to it beforehand; or since 1900 it may be put in writing and answered by the minister within eight days in the official journal; he may refuse a reply or delay it in the public interest. The member who has asked the question has a right to reply to the minister in a summary fashion. The question does not appeal very much to the Chamber as an instrument of control. The deputies prefer the interpellation.

The Interpellation. The interpellation is also a question, but a question that precipitates a discussion and a vote. The manner of asking interpellations is very simple. The member hands his interpellation to the president of the Chamber who reads it to the Chamber and then communicates it to the minister concerned, then the day for debate on the question is fixed by the Chamber. The day fixed must fall within the next one month, but if the question concerns foreign affairs the government may ask for indefinite postponement. Usually the day fixed is chosen by agreement between the member asking the question and the minister concerned. The member opens the debate, developing his attack and demanding explanations in a language worthy of an attacking army officer; the minister replies defending himself and the cabinet as best he can. This kind of battle may go on for a few hours or a few days or may last for one or two weeks; only when the ammunition is exhausted, a vote is taken. If the vote is favourable to the government, it is taken as a vote of confidence; if unfavourable, the cabinet

may resign, and if the subject is important the cabinet is bound to resign. But the subject need not be important in order to drive a ministry out of office. Interpellations may, and often relate to important and small matters also but they have been no less effective on this account. Most cabinets have resigned on account of the adverse vote in the Chamber of Deputies. However, there have been occasions when cabinets have resigned as the result of an adverse vote in the Senate. The ease and frequency with which the deputies may indulge in this practice has made it responsible for the instability of governments more than anything else.

QUESTIONS AND TOPICS

1. Compare and contrast the Chamber of Deputies with the House of Commons.
2. How does the French Chamber control the French Cabinet?
3. Write short notes on (1) Interpellation, (2) Committee system in the French Chamber, and (3) the President of the Chamber.
4. Describe the legislative procedure in the Chamber of Deputies.

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CHAPTER 15.

THE SENATE

Introductory. The Senate is the second chamber of the French Parliament. France had accepted after the Revolution Rousseau's ideology as a true description of the facts of the time. It was necessary for France to prove that sovereignty lay with the people, and to deny the inequality of man. But no second chamber could be established without admitting natural differences among men. France had a most unfortunate and damaging constitutional experience. One chamber had been unsatisfactory. Two chambers had been unsatisfactory. What was to be done? Compromise was the only solution if France were to have a constitution in 1875. The Senate is one of the many institutions which came to be established as a result of the compromise of 1875.

Aim of the founders. The aim of the conservative founders of the Senate was to make it a bulwark of conservatism against popularism and radicalism. They intended that it should exercise its influence on the side of moderation and stability. Accordingly its duty was to oppose and offer resistance, at least temporary resistance to the unconsidered and unbridled emotions and democratic enthusiasm of the Chamber whose members are more numerous, younger, therefore warmer and represent a more direct expression of popular opinion, This purpose found expression in several ways. Its composition, manner of its election, its powers all betray one anxiety to make the Senate a citadel of conservatism.

Composition. The Senate consists of 314 members who are elected for a period of nine years one-third retiring every three years. The present (1940) membership of the Senate according to political groups is : Socialists and Communists 17 ; Democrats of the Left, 152 ; Republican Union, 69 ; Republican, National and Social Action, 16 ; Democratic Union, 27 ; Independents, 33. Members must be forty years of age. One should not be misled to believe that renewal of one-third membership every three years brings any weighty contribution of new men with new ideas to Parliament or infuses fresh blood in the Senate. This is not the case as is amply borne out by the manner in which the Senators are elected.

Election. The Senators are not directly elected by the people, but by an electoral college. Originally one-fourth of the total membership were to be appointed by the National Assembly and thereafter by the Senate itself. But after the constitutional amendment of 1884 the entire membership of the Senate now is elected. The average size of the electoral college is about 800 persons. It consists of four types of votes :

1. Delegates of the municipal councils of communes chosen on a population basis ;

2. The deputies of the department ;
3. The General Councillors of the department ;
4. The members of the Councils of Arrondisments.

Ninety per cent of the electoral college consists of delegates chosen by communes. Thus one may say that the French Senate represents the individual interests of French citizens as well as the collective interests of the municipalities of France. It was this preponderance of the municipal element in the electoral college which led Gambetta to remark that 'the Senate was a general council of the communes of France.' If an official is elected to the Senate he must resign his office or vacate his seat. Elections are held in October at which voting is compulsory.

The Senate at Work. The Senate being small in size is more fitted for serious business. It was intended to be a deliberative body. Its personnel is unquestionably superior to that of the Chamber and hence there is an atmosphere of respectability in its sessions. It reflects a certain aristocratic sedateness. To gain the ear of the Senate a speaker must cultivate a reserve of language. A new member, whatever his attainments, is expected not to be too forward ; while among its old members respect for seniority and rank is insisted upon which fact would seem to many as incongruous in Republican France.

The two Chambers hold their sessions simultaneously. As in the case of the Chamber of Deputies the Senate does most of its work through committees of which there are twelve at present. The legislative procedure in the Senate is the same as in the Chamber of Deputies. The President of the Senate presides at the meetings of the Senate.

Powers of the Senate. The constitutional powers of the Senate may be divided into three separate functions :

1. Partial or total revision of bills coming from the Chamber and initiation of new bills ;
2. Financial powers ; and
3. Control over the government.

Ordinary Legislation. In regard to bills sent to the Senate by the Chamber the latter has no legal power to compel the former to proceed to the discussion of a bill ; in consequence the Senate may indefinitely repulse a measure passed by the Chamber. An instance of the dilatoriness of the Senate was made known to the world in June 1928 About forty bills were sent by the Senate to the Chamber ; these bills included a measure with the remark, " Passed by the Senate, February 26, 1883," which means that the bill in question was passed forty-five years before. But it has been settled by the rules and procedure of both Chambers that none has the power directly to compel the other, but each may pass a resolution begging the government to exert its influence. The Senate allows its Commissions to report on bills within

six months. Prior to 1903 no such rules existed. But normally it co-operates with the Chamber. But its power of resistance is quite potent and not being dependent on popular electorate may resist popular opinion with impunity. Only in times of national crisis it may choose not to do so because of fears of consequences that might follow. One can produce a long list of important legislative measures the adoption of which was long delayed because of the procrastination or hostility of the Senate. For example, the measure on woman suffrage which has been passed nine times by the Chamber, but has not yet become law; the secret ballot measure, before it became law, was defeated five times in the Senate (1904 to 1913).[1] But since the last war the Senate has been less stubborn in its resistance to the Chamber.

Deadlocks. The two Houses have set up a regular method of consultation or amendment of a bill by the other House. But these rules are also based on the principle that both the Senate and the Chamber are independent. There is no appeal to the people, no swamping as in Canada. The only House which can be constitutionally dissolved is the Chamber and not the Senate. Measures pass from one chamber to the other until agreement is reached, if not, the bill dies. In former years a joint commission was set up to find out a basis for agreement. But since 1909 this method has not been used. Now it is up to the minister concerned to work hard for the adjustment of differences between the two Houses on a measure. If no satisfactory adjustment is effected the measure is given up.

Financial Powers. The financial powers of the Senate are considerable. But finance bills can originate only in the Chamber. The Chamber has priority but not decisive power; constitutionally its financial powers are equal to those of the Chamber. After the Chamber has voted the budget, the Senate is lawfully free to modify the measure by increasing, reducing, adding or removing items of expenditure or revenue. But due to its remoteness from popular opinion a theory is advanced by some that the Senate should confine itself only to registering a protest against such items in the budget to which it takes exception and leave the final decision to the Chamber of Deputies. But the Senate has refused to accept such a thesis of its powers. Still the pressure of time and its own unrepresentative character do not permit the Senate to study the budget in a detailed manner. The Chamber employs clever tactics to assert and maintain its hold over financial matters by sending the bills late in the financial year, and thus throw upon the Senate the responsibility for not voting the budget in time.

The present position is that although the Senate may reduce items of appropriation it does not insist upon increasing them above the level agreed to by the Chamber or restoring items thrown out by the Chamber. In financial measures other than the budget, the Senate has full rights to modify, reduce, increase, accept or reject the proposals of the Chamber.

1. Sharp, W. R. The Government of the French Republic, (1938), p. 127.

Control over Government. The third power of the Senate is its control over the administration exercised through its control over the government. The Senate derives this power from the constitution according to which ministers are collectively responsible to both Houses for the general conduct of the governmental policy and individually for their personal acts. The Senate has been able to exercise this power a number of times and at other times has enforced its wll by the threat to use this power which belongs to it as of right. The Senate has never allowed this power to become dormant. It is true that the Prime Minister of France is but rarely a Senator; true also that ministers appear more before the Chamber than before the Senate, but this absence can not be reduced beyond a safety line. But during the first twenty years of the Republic the Senate seemed to accept a position of inferiority as compared with that of the Chamber in the matter of controlling the government. It exhibited indifference at the coming in and going out of governments. Ferry though defeated in the Senate on an important clause of an Education Bill never resigned and what is more important no one ever expected him to do so. Jules Simon complained in 1894 that when a minister openly told the members of the Senate at a public meeting that if he was defeated by the Senate it was not only his right but his duty to continue in office, no protest was raised by the Senators against this assertion. In the early nineties the theory of constitutional impotence was an almost accepted fact and its insignificance was noted by several observers. But the growth of a corporate spirit and a sense of independence brought a significant change. Toward the end of the 19th century the Senate showed a disposition to assert itself. For the first time in the history of the Republic it compelled a ministry to resign in 1896. Since then it has claimed and used this power on several occasions. It overthrew Briand in 1913, Herriot in 1925, Tardieu in 1930, Laval in 1932 and in most recent times Leon Blum in 1937 and 1938.

This inclination of the Senate to assert its will over the government enjoying the confidence of the Chamber popularly elected raises a question of great importance to the proper working of the French parliamentary system. The matter is admirably summed up by Professor Lindsay Rogers as follows: "The instances in which Ministries actually leave office because of the Senate are an inadequate index of the influence of the upper Chamber. The Senate may make them trim their sails so that the winds in the Chamber lose their effectiveness and the Deputies desire another ship. Or the Senate may be an 'aid to a Ministry pitted against the Deputies', —in short, 'a stabilizer of ministerial instability.' "Equally, as events during the last fifteen years have shown, the Senate may be an unstablilzer of ministerial stability."[1] Thus unlike the English Cabinet the cabinet in France is to be responsible not

1. Lindsay Rogers. Political Science Quarterly, September, 1937. 'M. Blum and the French Senate.'

only to one house of legislature but two, and it does not know when any one of its masters would take kindly or unkindly to it. Concluding we may say that the Senate exercises, as the Chamber does, a regular control and supervision over the government.

It may be asked why a serious move to reduce the powers of the Senate has not been made. For more than a generation the anomalous position of the Senate has excited much controversy among French constitutional lawyers. Some have held that the powers of the Senate is inconsistent with the power of the Chamber to have priority in finance bills. In their opinion the Senate has been given undue importance by making it a high court of justice for the trial of the President and Ministers on charges of impeachment. Others accord it equal powers of control with the Chamber in the control over the government. The extreme left—as the Labour in England —has always favoured its abolition. Yet in 1937 the Socialist M. Blum did not raise the issue of its abolition. The fact is that after sixty-five years of work and history the reform of the Senate has become bound with the question of general parliamentary reform and unless that question is tackled the position of the Senate will remain as it is.

The Senate possesses one special power, namely, it can be constituted as a high court of justice for the impeachment of the Pr sident of the Republic and Ministers when they are impeached by the Chamber of Deputies. It shares the power of dissolving the Chamber with the President of the Republic as its consent is also necessary for the dissolution of the Chamber.

Conclusion. Thus in conclusion it can be said that the Senate has admirably fulfilled the intentions of its founders. It has played, and still plays, an important and useful part. On one occasion it saved the Republic (1888, Boulanger episode). ' The function of the Senate is to resist, says Barthelemy, and ' in its own way it fulfils this function.' It rarely carries its resistance to a point of rupture. Its first duty is to provide a brake to the rapidlp rolling politics of France but not too right a brake and by its conduct in and contribution to the French governmental system it has demonstrated that it approaches the nearest ideal of a second chamber. Being stable in composition and habits it has provided a good and useful counterpoise to the haste and volatility of the Chamber. One may say with Professor Finer that the Senate watches and plans, weeds, discriminates and quashes.

QUETSIONS AND TOPICS

1. Compare the French Senate and the English House of Lords.
2. Discuss the position of the Senate in the French Parliamentary system.

3. Elucidate: 'The Senate watches and plans, weeds, discriminates and quashes.'

4. Discuss the relations between the Senate and the French Cabinet.

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CHAPTER 16.

THE PRESIDENT.

The President is the formal head of the French State just as the King is the ornamental head of Great Britain. The President of the Republic is called the Chief of the State while the President of the Council of Ministers is called the chief of government. The President of the Republic personifies the continuous authority of the French State while the President of the Council of Ministers is the political head of the government of the day. Thus the French Presidency possesses the characteristic of constitutional monarchy in England, that is, of being the supreme power in the State while the real rulers change.

Election and Term of the President. The procedure of the election of the President is quite simple and there are no election campaigns as in the case of the election of the American President. The President is elected by a National Assembly—the Chamber of Deputies and the Senate in joint session at Versailles. For this purpose the session of the National Assembly is to be convoked one month before the expiration of the President's term. If the President or rather the government fail to do it the National Assembly is convoked on the call of the President of the Senate two weeks before the expiration of the term of the outgoing President. In case of the death of the President, the National Assembly is to be convoked immediately to elect a new president for the full term. If there are many candidates, though no formal nominations are invited for the office successive ballots are held until one candidate obtains absolute majority which in this case means the majority of all the actual valid votes. The President is eligible for re-election but there is a well-established convention that normally the outgoing President does not seek re-election. Only two presidents, Grevy and Le Brun, have served longer than the seven-year term. The convention not no seek re-election is so well-established that the President taking leave of parliament often publicly announces his decision not to seek re-election. The President is elected for seven years and after retirement he may take to active politics. For example, Poincare after his retirement served twice as prime minister. Again old Doumergue was called from his retirement to head the 'National Government' designed to restore order after the 1934 crisis in France. Thus the system of election of the President differentiates the presidency from the English Crown which is hereditary and normally for the life-time of each successor. It differentiates the French presidency from the American presidency also which is elected by direct suffrage.

There are numerous reasons for the indirect election of the President. First the indirect method is more rapid and quiet and Frenchmen needed both rapidity and quietness in 1875; therefore they decided that the President should be chosen not by them directly but by their chosen representatives. Secondly the French feel very shy of plebiscites. They remember that the plebiscite of 1848 produced Louis Napoleon and in order that an ambitious President may not repeat the history of 1848 they decided that he was to be elected indirectly; to this may be added the self-importance of French parliamentarians. The President is paid 3,600,000 francs a year as salary and allowances; he has also two country residences near Paris at his disposal where he may rest and if he likes "hunt rabbits."

The Constitution is silent on the question of the qualifications required, except that by an amendment of 1884 families who have ever reigned in France are debarred.

Powers of the President. The President of the Republic possesses very large powers. The monarchists of 1875 insisted on extensive powers being given to the President in the hope that some time in future the presidency may easily be changed into a monarchy. But little did they know that when they agreed to the creation of the presidency they won a title but lost an institution; some of the important powers of the President are:

1. He has the right to initiate laws.
2. Laws when they have been voted by the Chambers are promulgated by him.
3. He supervises and ensures the execution of all laws.
4. He has the right of pardon.
5. He is the Commander-in-Chief of the army and navy.
6. He makes appointments to all civil and military offices.
7. He receives from and appoints ambassadors to foreign powers.
8. He can dissolve the Chamber of Deputies before the expiration of its term with the consent of the Senate.
9. He may indicate to the Chambers the necessity for revision of the constitution.
10. He has the power to convoke the Parliament in special session.
11. He may communicate with the Chambers by messages which may be read by a minister.
12. He possesses a suspensive veto over the bills passed by the Chambers.
13. He designates the President of the Council of Ministers.

14. He has the right to preside at the meetings of the Council of Ministers.

15. Within the scope of his constitutional activities he is responsible to no one.

Nature of the President's Powers. It is apparent from the above that the powers of the President are very imposing. But, however imposing the presidential powers may be the Constitution makes it clear that they cannot be exercised by the President himself. It is laid down by the constitution that every act of the President must be countersigned by a minister[1]. The countersign involves responsibility on the part of the minister, he will not countersign any document to which he takes exception; it is he who determines whether the presidential powers shall be exercised in this or that way. In fact it is the minister who formulates decrees and the President who signs them as a matter of routine. Any one who is familiar with the mysteries of the English constitution knows that the powers of the Crown do not belong to the King. The powers of the President resemble the powers of the Crown. They are exercised through a responsible executive. The position is made still more definite by the constitution which provides that the ceremonial executive shall be responsible only in case of high treason. But it does not mean that the President is above civil and criminal law. Though politically irresponsible, he may be prosecuted like any other citizen, but in criminal cases the Senate alone can assert jurisdiction.

It must not be assumed that the President is entirely a figure-head. He has real opportunities of exercising his influence in the formulation of the policy of the government. There are a thousand degrees of this influence depending upon the calibre and character of the man. For example, the President has a large degree of discretion in the nomination of a prime minister. Of course the President must choose as premier a man who possesses confidence of the majority in the Chamber. But there are many political groups in the Chamber, and a majority may be formed by different combinations among them. Therefore the choice of the President is not limited to one particular person. It means that any one among a number of men might succeed in getting the support of the majority; and within this circle the President is free to choose any one. Of course this choice is to be ratified by a vote of confidence. Legally he can dismiss the minister but for this also the counter-signature of the dismissed minister is required for the appointment of his successor: an outgoing minister has never refused his signature; but he might refuse and place the President in a ridiculous situation as happened in 1895 when President Casimir-Perier had to resign because he was placed in an awkward position by Charles Dupuy, the dismissed minister who withheld his signature for several days.

1. Constitutional Law of Feb. 25, 1875, Article 3.

Again the President presides at the meetings of the Council of Ministers. This gives him an opportunity to influence the general policy of the government. Though he has no vote, he can certainly take an equal part in the discussion of all questions.

In the domain of foreign affairs his opinions count for most. Because of his position he possesses more knowledge of current negotiations in the field of international relations than majority of the ministers except the prime minister and the minister for foreign affairs. He signs all treaties, including secret treaties. As to the power of veto and the dissolution of the Chamber of Deputies it may be pointed out that never since 1877 the President has proposed the dissolution of the Chamber before the Senate. nor has he ever exercised the right of veto with a view to a second deliberation. However, the Constitution empowers the President with a suspensive veto. According to Article 7 of the Constitutional Law of July 16, 1875, the President of the Republic is required to promulgate the law within the month following the transmission to the Government of the law as finally passed. If a law has been declared urgent by an express vote of each Chamber he shall promulgate it within three days. But within this fixed period for promulgation the President may by a message giving his reasons request the Chambers to reconsider the measure which can not be refused. Apart from opportunities of exercising his influence all the actualities of executive power are centred in an office not even foreseen by the Constitution—the presidency of the Council of Ministers.

This falsity-*cum*-actuality of presidential powers has led many to consider the office as useless and there are current many a good joke against the presidential office which is derided perhaps more by Frenchmen than by foreigners. For example, Clemenceau the Tiger once sarcastically remarked, 'There are two things in world for which I have never seen any use: the prostate gland and the President of the Republic.' But let it be pointed out that Presidency in France is as useful or useless as monarchy in England.

The President of France and the King of England. Walter Bagehot making a distinction between a monarchy and a republic once wrote, 'Royalty is a government in which the attention of the nation is concentrated on one person doing interesting actions. A Republic is a government in which that attention is divided between many, who are all doing uninteresting actions.' What Bagehot wrote is not entirely wrong. Of the five or six characteristics which Bagehot admired in the English Monarchy, the French Presidency possesses only one which is that of being the formal supreme power in the State while the real rulers change.

It is usual to compare the French President with the King of England. But as the dignified element in the French Constitution he is not even remotely comparable with a monarch. The monarch is the head of society. He sets the pace in social fashion

and festivities, but the French President is neither the head of society nor does he move in those circles in which the bearers of titles of Royal and Imperial origin move. Nor does the people among whom the presidency is held in genuine respect protect it from the 'playful malice of a race given to irony'. But if the President is not encased in a royal setting he is the most prominent person in the country. He is constantly in the eyes of the people. About three quarters of his time is taken up by semi-social activities. He is permanently on the run, travelling to remote parts of the country, stopping at stations, praising municipal councillors on the railway platform, kissing children and talking to their grand-mothers, accepting bouquets-from young ladies and smiling back to them. All these ceremonial functions give the President the appearance of a show room figure. But in reality he is much more than that. It is said that 'the ornamental in him is so visible that it hides the useful'. Here he bears a favourable comparsion with the English king But it must not mislead us. The English king possesses an authority which is totally absent in the French President. The English king inherits the immense tradition of kingship, its moral and mystical respect and attributes. But the President has nothing to counter-balance this inexhaustible store of prestige. By comparison he is only a functionary appointed for seven years. He may be deposed, and impeached; while the permanent and inherent prestige and authority of the king is not to be used frequently. It is a latent power. The less it is used the greater it is.

In the regular conduct of business the authority and action of the king is defined and limited and here the President again bears a comparison to him; for both have the right to be consulted by their ministers also the right and duty to advise and warn.

Again the French President presides at the formal meetings of the cabinet and thus may be said to have a real share in the formulation of the policy of government, but the king in England has no right to be present in the cabinet meetings and therefore has far less opportunity of influencing the governmental policy than the French President. On the whole his intervention in and influence upon current affairs is more regular, perhaps more effective than that of the British king. Again in the selection of a prime minister the French President has a wider discretion and more real choice than the English king. The comparison and contrast of the French President with the English king and the American President has created a celebrated political epigram which says that the President of France 'neither reigns nor governs' while the English king serves as a useful and ceremonial symbol and the American President really governs. In the light of the discussion of the powers of the President and the real opportunities which are afforded him for the performances of his duties it only remains to be pointed out that like most epigrams, political and non-political, it is not quite true to facts. The French President is something more as well as something less than the English king.

Usefulness of the Presidency. The position which the French President should occupy under the French parliamentary system is not properly understood According to Casimir-Perier, "It is probable that many Frenchmen do not understand it at all." And it is not difficult to conclude from the writings of many writers that the constitution had intended to give large and independent powers to the President of the Republic, and somehow the usurping ministers had deprived him of these powers. But it must be pointed out that the constitution had no such intention. The powers of the President are 'simply executive powers placed in the hands of responsible ministers.' And when 'the executive power' was described by Gambetta as the strongest which had ever been set up in a democracy, he was thinking of the minister and not of the President. The President is not capable of doing anything by himself; he can in due form place his signature beside another, if he is required to do so. It is further agreed that with the exception of his signature on his resignation his signature only serves the purpose of an autograph collection; and among all his powers the only one which he can exercise personally and freely is to preside at national ceremonies. This being the case they say why have a President? Why not do away with this 'pompous, expensive, and perfectly useless officer?' The abolition of the presidency has been proposed several times by Radicals and Socialists. Englishmen in the early years of Queen Victoria's reign were asking the same questions. But it has now become clear that an ornamental executive also has an important place and usefulness in the parliamentary system. It is due to his existence that ministers are relieved from many harassing social duties. The French President has those rights which are also possessed by the King of England, that is, the right to encourage, warn and advise his ministers. No wise President with a force of character need any other to make his usefulness, value and importance felt in the affairs of the nation. Although according to the fundamental principle of the French Constitution 'the President should hunt rabbits and not govern,' yet by no means it can be said that he is only a superfluous ornament.

Questions and Topics.

1. Discuss the powers of the French President.

2. Compare and contrast the French Presidency with the English Monarch?

3. Why the President of France is elected by indirect method?

4. Why the Presidency in France is not abolished?

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CHAPTER 17.

THE CABINET.

Introductory. The French Parliamentary system requires a balance of power. On the one hand there is the Parliament and on the other the un removable head of the State. This balance of power in France is supplied by the cabinet. The chief of the State appoints the ministers; Parliament may overthrow them. It must also be noted that cabinet government appeared in France for the first time under the Constitution of 1875. As a consequence it brought in the institution of ministerial responsibility to the Chambers and the establishment ot a non-hereditary chief of the State, elected by the legislature for a short period.

The formation of the Cabinet. In theory, the President selects ministers. In practice he only chooses the prime minister who makes appointments to the cabinet which are ratified by the President of the Republic. It has been noticed in preceding pages that any one who is able to command a majority in the Chambers or rather in the Chamber of Deputies may be designated as premier. The task of the premier is not easy. Ho has to face as many, if not more, difficulties as the British prime minister in the selection of his colleagues. These difficulties are accentuated by the peculiar group politics in the French Parliament. The premier in selecting his colleagues must think less of their efficiency in administration than of their political strength, the votes which they can bring with them two swell the common store, because persons who are able to maintain their leadership under the exacting conditions of French parliamentary life are necessarily dangerous critics or valuable allies. Usually the person designated the premier (President of the Council) selects majority of his colleagues from his own group, but generally adds one or more from other groups also. Thus the French cabinets are always more or less coalition cabinets. After a while we will have occasion to notice the effect of this fact on the strength of the cabinet.

The qualities which entitle a person and which are looked for by the premier in the cabinet member are almost the same which are required in a cabinet member in every democratic country. In the case of France they may be summed up as—

(1) alertness of mind,
(2) ready wit and eloquence,
(3) personal popularity,
(4) tact in parliamentary behaviour.

(5) general adaptability and

(6) a good sense of humour.

In the allotment of posts knowledge also counts for something. This is specially so in the case of the departments of navy, military and finance. Dignity of character and a blameless character are also valuable specially in a prime minister, yet their absence will not be considered a disqualification. The frequency with which the cabinets are reshuffled always ensures that there are plenty of tried men from whom any premier may make his selection. Talent is never lacking, but it is more often of the showy than of the solid type.

Ministers generally members of Parliament. In France, as in England, ministers are usually members of the Senate or the Chamber of Deputies. But legally the ministers might all be appointed from outside the legislature. Even now the ministers of war and marine are more often than not professional men. Here again the practice is different from what it is in England where all members of the cabinet must be members of the legislature. It is also different from what is obtained in America, where no member of the cabinet can be a member of the legislature. In the case of France this exceptional arrangement can be justified only on the ground that these two vital departments—the army and navy—should be kept free from political influences as far as possible. But at the same time it can not be said that other services are less technical. Some of the services are as technical as the army and marine. If the minister of marine should be an admiral the public works minister should be an engineer. But in fact he is only a politician and not an engineer; his duty is not to lay and run railroad lines or to build bridges, but to see that the policies which the parliament has formulated with regard to railroads or other public works are executed efficiently. He is only a medium of communication between parliament on the one hand and the permanent technical officers on the other. When the minister prepares any measures to be submitted to the legislature he consults these departmental officers who provide him with necessary information to support the measure in debate in the lagislature and finally supervises their execution as the law of the land. The minister is not supposed to possess technical and detailed knowledge of all subjects under his charge and in parliamentary debates he need not only depend entirely upon his own superficial knowledge of a special subject. By presidential decree commissioners may be appointed to help him in the discussion of any particular bill. These commissioners are always high officials of the civil service. They act simply as assistants of the minister and have neither initiative nor responsibility. According to the constitution such appointments are to be made only 'for the discussion of a particular bill', yet a decree of 1880 appointed the Governor-General of Algeria to assist the minister of the interior 'in all debates and

interpellations ' concerning that colony. A French writer, Charles Benoist, is of the opinion that, ' in the end we shall see officials defending their chiefs before the Chambers.'

Size of the Cabinet. The constitution neither creates nor provides for the creation of ministries or executive departments. It is silent with regard to them. And when the constitution is silent the question arises who should act Is the legislature competent to act or the executive? It is held that since the President of the Republic has the right to appoint to all civil and military offices he has the right to create the offices themselves ; and since he possesses the right to appoint ministers, he possesses the right to create ministries. It is therefore the cabinet which determines, by means of presidential decrees, at any given time the number of ministers and the distribution of work and functions among them. For example, in 1915, when Aristide Briand became the premier he brought into the cabinet a general secretary of the foreign affairs ministry, a minister of state and four ministers without portfolio. But it must not be assumed that this power exclusively rests with the cabinet. The Parliament can interfere with the creation of a new ministry not only in a negative way by refusing supplies, but it may itself create a new ministry and regulate its functions, *e. g.*, the parliament created a minisry of colonies in 1894.

The size of the cabinet in France, as in England, has varied from time to time. Before the last world war there were twelve executive departments, ranking in this order : justice ; foreign affairs ; interior ; finances ; war ; marine ; education, and fine arts ; public works, posts and telegraphs ; commerce and industry ; agriculture ; colonies : labour and public welfare. In 1920 three more departments were added : public health, pensions, and liberated regions. The public welfare department was transferred to the newly created department of public health. But in the post-war period the size of the cabinet in France, as in England, has gradually increased. The cabinet appointed on March, 21, 1940 consisted of twenty-two member :

(1) Prime Minister and Minister for Foreign Affairs—Paul Reynaud.
(2) Vice-President of the Council and Minister for Alsace-Lorraine—Camile Chautemps.
(3) Minister of War and of National Defence—M. Daladier.
(4) Minister of Marine—M. Champinchi.
(5) Minister for Air—M. Eynac.
(6) Minister of Blockade—M. Monnet.
(7) Minister of Armaments—M. Dautry.
(8) Minister for the Colonies—M. Mandel.
(9) Minister of National Education—M. Sarraut.

(10) Minister of Jusice—M. Serol.
(11) Minister of the Interior—Henry Roy.
(12) Minister of Finance—M. Lamoureux.
(13) Minister of Information—M. Frossard.
(14) Minister of Commerce and Industry—M. Rollin.
(15) Minister of Public Works and Transport—M. Monzie.
(16) Minister of Labour—M. Pomaret.
(17) Minister of Pensions—M. Riviere.
(18) Minister of Posts and Telegraphs—M. Julien.
(19) Minister of Merchant Marine—M. Rio.
(20) Minister of Supplies—M. Queuille.
(21) Minister of Agriculture—M. Thellier.
(22) Minister of Public Health—M. Heraud.

There is an inner cabinet in France also as it is in England. In 1940 the inner cabinet in France consisted of nine members and included—

(1) Prime Minister and Minister for Foreign Affairs.
(2) Vice-President of the Council (Vice-Premier) and Minister for Alsace-Lorraine
(3) Minister of War and of National Defence.
(4) Minister of Marine.
(5) Minister for Air.
(6) Minister of Blockade.
(7) Minister of Armaments.
(8) Minister for the Colonies.
(9) Minister of Finance.

It will be seen from the above that the inner cabinet mostly included the heads of defence or allied departments. Perhaps it was due to the grave European situation in 1939—40.

The Under-Secretaries. In England ministers are assisted in their parliamentary duties by under-secretaries. But in France where ministers can participate freely in the debates in the Chamber of Deputies as well as in the Senate, a different practice obtains Under-secretaries are appointed not to all, but to those departments in which the work is so heavy that a minister can not cope with it. They are appointed to help the minister. Mosty they are appointed to manage some important branch of the administration which deserves more autonomy and freedom than it would have as a mere sub-department of an important ministry. Thus under-secretaries are appointed for tourism, physical education, technical education, fine arts, etc. Before the war there were usually four under-secretaries but since then their number has been steadily increasing due to the increase in the work of the departments of government.

Status of Under-Secretaries. The under-secretaries do not enjoy the same status as the ministers. Though they come in and go out of office with the cabinet they are not ministers in the constitutional sense of the term. Their duties are defined, in some detail, by a presidential decree. They do not possess the same prerogative as the ministers. They cannot countersign a presidential act. Legally the ministers are responsible to parliament for their conduct as they are responsible for the conduct of any other subordinate. The under-secretaries are as a rule members of parliament. It is said that these offices exist not only to relieve ministers who are overworked, but also to provide means to satisfy young ambitious deputies whom it would be dangerous to neglect. The more the number of offices a prime minister has to distribute the easier it is for him to control parliament; because the deputy who holds an office or whose friend gets an office has a definite personal interest in the fortunes of the cabinet. The under-secretaries receive a considerably lower salary than the ministers but are entitled to the same military and civil honours as the ministers.

Position of the Prime Minister. The premier is officially known as the president of the Council of Ministers. He is himself appointed by the decree of the French President. He appoints his colleagues, and may remove them, but he does not wield over his colleagues an absolute authority. Apparently because of his right of appointment and dismissal he possesses the power of political life and death. But due to his dependence upon a combination of parliamentary groups he is engaged more in soothing injured feelings than in discovering disciplinary measures. The task of the French Premier is more difficult than that of the English. He usually takes to himself the ministry of the interior which gives him control over the police, the prefects, the sub-prefects, the prefectorial councils, the municipal councils etc. The ministry of the interior is the most important as it affords means of action which the premier badly needs. It is unfortunate for France, because no one man is capable enough to perform the double duty of supervising the general conduct of government as well as that of directing a great executive department. His duties are not only numerous but also delicate. This is not all. Instead of devoting most of his time to the discharge of his executive functions, he is required to spend days and even nights answering the parliament where he and his colleagues look like criminals before a jury.

He must possess physical endurance, alertness of mind, grasp of facts, power of sarcastic and rapid repartee, good humour, and many more qualities to survive a long debate on foreign affairs or on the budget. His functions are not merely of a negative nature. He must also manage to be popular with the crowd: must give careful statements to the press—both foreign and national; must appear at military parades; must attend important inaugurations; he has also to deliver

speeches over the coffins of dead statesmen, generals and admirals; must keep in constant touch with his constituents, must preside over banquets and the annual conferences of his political party. For example, think of the life of a man like Herriot who was simultaneously President of the Council, Minister of Foreign Affairs, Deputy, Mayor of the second largest city in France, President of the Radical Socialist Party and in addition an author as well. But this is not all. Of late years the French Premiers have become touring diplomats. Tardieu went to The Hague in 1929 as representative of his government; Laval to Berlin and Washington in 1931, to Geneva in 1932; Daladier to London in 1938, to Munich in 1939 and again to London in 1940. This preoccupation of the French Premier has important repercussions on the working of the parliamentary system in France which we will have occasion to notice while discussing the relation of the cabinet and the legislature.

The Working of the Cabinet. The cabinet is officially known as the Council of Ministers and at its meetings the President of the Republic presides. But there is an informal meeting of the ministers also which may be called the cabinet meeting at which the premier presides. The difference between the two may be expressed as the council of ministers being the place where one must not smoke, the cabinet meeting being the place where one may smoke. The one is formal, the other informal. The meetings of the cabinet are secret. No record is kept of what transpires in the meeting. This secrecy of proceedings and the practice of not keeping any record makes it difficult to ascertain the actual responsibility for a decision.

As has been noticed above, the French cabinet before the War (1914—1918) had no rules of procedure, no agenda was framed for its meetings, no minutes were kept, and it had no secretary. There was less preparation for its work than in England before the war. President of the Council of Ministers introduced subjects haphazardly which were treated by a desultory, tediously long and inconclusive conversation. In 1916, on the model of Lloyd George's War Cabinet Ribot also created a war cabinet in France. But it was transformed by Painleve and Clemenceau into an under-secretaryship of State attached to the Presidency of the Council. This organization collected information for the Premier as well as co-ordinated the work of different departments. This organization ceased to be continuous after the war, its coming into existence or going out of it depending upon the varying personalities of the Premiers. The French system of cabinet solidarity leads to many complications. French politics are not a two-party politics. It is a group politics, a cabinet may consist of men of widely divergent opinions. Even if a cabinet is overthrown, only a few ministers are replaced by men from new groups. Resigning ministers often find themselves the opponents of their former colleagues.

Responsibility of the Ministers. The Constitutional Law of 1875 is the first since the Revolution to clearly state the responsibility of the ministers which means principally 'political responsibility.' The ministers are collectively responsible to the Chambers for the general policy of the government and individually for their personal acts. Thus the civil and legal responsibility of the ministers is individual while political responsibility is collective. With regard to ministerial responsibility the constitution of 1848 provided : 'In all cases of ministerial responsibility, the National Assembly can, according to circumstances, send the inculpated minister either before the High Court of Justice or before the ordinary courts for civil compensation.'

As in England it means nothing else than that the cabinet can remain in office, only so long as their direction of affairs meets with the approval of Parliament. It must face the parliament as a body and fall as a body. Collective responsibility has several advantages. It ensures continuous co-operation and continuous harmony between the cabinet and parliament. But in France it does not imply that the cabinet should try to find out and follow the will of parliament. As Raymond Poincare in an article in *Le Temps* of May 30, 1906 wrote, 'The government must in no way abandon its role of leadership ;.....in a word it must claim decisively the honour and the responsibility of governing.' But whenever parliament refuses to recognise and accept such leadership the cabinet must resign. The Parliament usually expresses its refusal to accept such leadership in the form of a vote of want of confidence. It needs to be pointed out that individual responsibility is hardly consistent with parliamentary system of government. It leads to several factors which do not contribute towards the healthy working of parliamentary government. It suggests divided opinion ; divergent views within the cabinet ; it encourages deputies to interfere in technical matters of administration, and the deputies are no competent judges of the technicalities of administration. Although sometimes individual ministers have been forced to retire, the connivance of the cabinet and its failure to intervene and protect one of its members by demanding a vote of confidence is taken as a confession of weakness. But there is a strong tendency now to substitute collective for individual responsibility.

The Cabinet and the Parliament. It has been mentioned in Chapter 14 and 15 that according to the constitution, ministers are politically responsible to 'the Chambers'. But, as we have pointed out, of the two chambers the Chamber of Deputies has been able to establish its ascendancy ; though there have been occasions when cabinets have been compelled to resign as a result of an adverse vote in the Senate. For example, Briand Cabinet resigned in 1913, Herriot Cabinet in 1925, Tardieu Ministry in 1930, Laval in 1932, Leon Blum in 1937 and 1938. Thus the relationship between the government and the Chambers is of an unsettled nature. The

ministry is lost between the devil and the deep sea. It has to serve two masters both of whom differing in their constitution, outlook, temper and political principles. The position of the ministry in relation to parliament is more to be pitied than condemned.

The Cabinet in cases of conflict with the Senate can make an appeal to the electorate by asking the Senate in the name of the President of the Republic for a dissolution of the Chamber of Deputies. According to accepted principles of parliamentary practice both sides would accept the result of the election. But it is unfortunate that this power of dissolution is enjoyed by the ministry more in theory than in practice and the ministry can not dissolve the Chamber of Deputies. The reasons are simple. Why should the Senate consent? Why should it surrender its advantageous ground when it knows that it can block the whole legislative programme of the ministry? The very fact that the government is asking for dissolution means that it expects a favourable result. In England the cabinet possesses an independent right of dissolving the lower house as a means of forcing compliance on the upper chamber. The French ministry lacks such a right. The absence of this right has caused continuous embarrassment to the cabinet and to the chambers. As a result of this fact they are powerless in the face of deadlocks between the chambers; they can not make any appeal to the people against the action of 'Artificial and evanescent majorities in the Chamber of Deputies itself.' Being helpless they may be overthrown by hastily patched combinations, by intrigues. They know the insecurity of their position and as a result of this knowledge assume a servile attitude towards the parliament. In England the cabinet is the master of the English Parliament, while in France it is the servant.

On the other hand the French parliament is the master of the fate of the ministry. It is as it should be in a parliamentary system of government. But unfortunately parliament in France does not perform its duty in the same spirit in which its neighbour across the Channel does.

An average French deputy considers discipline arbitrary, order reactionary, authority tyranny. And in most of the interpellations these three epithets can be found. The French government enjoys numerous prerogatives the result of which is that there are innumerable pretexts for interpellations. Even one of the greatest French premiers, Jules Ferry, was made the target of accusations holding him personally responsible for the cholera epidemic, which invaded southern France in the early eighties. The parliamentary duties weigh so much upon the ministry, consume so much of their time, and cause so much harassment to them that the premier and his colleagues when facing parliament look like 'criminals before a jury.' This results in the fact that French ministers can not remain in office for long and are accused of incompetence. They are not incompetent, their incompetence ensues from the lack of power

over parliament. What France needs is effective leadership. The ministry should have the power to dissolve the Chamber when that body withdrew its confidence, so that they could ask the country to decide between them and the Chamber. This wrecking of cabinets which is taken more as a political sport than as a means of steading the government would become a dangerous employment if things were not remedied.

Instability of French Cabinets. As a necessary consequence of the above the 'expectation of life' of a French Ministry is quite short. Thus France had 94 ministries during a period of 60 years (1876—1937) giving an average of less than 8 months which is much less when compared with the average duration of cabinet in England which is more than four years. But a change of ministry does not make much difference in France as it would in England ; nor can it be taken to indicate any change in public opinion. This frequent changing of ministries is a phenomenon much deplored by Frenchmen themselves. They consider it harmful to the nation, because it does not allow ministers to acquire a hold over their departmental duries, it delays legislative reform and progress, and above all it produces a general sense of instability. These are the defects which have done much to discredit parliamentary government in France in the eyes of the people. But their evil effects are neutralised by two factors :

1. The frequent fall of ministries only disturbs but does not disorganize the general administration which is worked by a competent as well as a strong bureaucracy and which is not influenced by the coming in or going out of ministries.
2. It does not necessarily mean break in the policy —both foreign and domestic—of the government. The lines of the French foreign policy are prescribed by the need of maintaining unity in the face of any outside danger. Further no break in the continuity of domestic or foreign policy of the government need be feared, because most of the ministers with the retiring cabinet find themselves included in the new one. On the average, roughly speaking, five times out of six more than half of the ministers hold over. This is borne out by an interesting incident. When Clemenceau, years ago, was accused of bringing about the downfall of so many cabinets he said : "I fought only one ; they are all the same."

Causes of Instability. There are two categories of causes which make ministries so short and instable ;

1. Superficial causes—that is those which appear on the surface. These may be said to be the presence of a large number of political groups in the Chamber of Deputies ; the laxity of discipline in these groups ; the frequency of shifting allegiance from

one group to another ; the suddenness with which political crises make their appearance, and the tendency on the part of groups with extremely opposed convictions to unite simply for the purpose of over-throwing a ministry which they hate for opposite and different reasons and wish to dabble in the destruction of the ministry for the sake of mere change.

2. But behind these surface causes there are other causes of wider scope and which are due to permanent conditions some of which. according to Bryce, are

(*a*) "Regional divisions of opinions in the country, making the political tendencies of the West, of the North and East, of the South, and (still more markedly) of the South east differ so much from one another as to prevent a general consensus of view on fundamental questions.

(*b*) The antagonism between the strongly Roman Catholic proclivities of certain sections of the population and the anti-religious, or at least anti-clerical, vehemence of other sections.

(*c*) The hostility of the industrial masses, especially in the manufacturing and mining areas, to the employers and to the richer sort of people generally. Rut for the outside pressure, enforcing national cohesion, a class war might have broken out in many places. as indeed it has done at intervals in Paris, and to a less extent in other industrial centres.

(*d*) The indifference to politics of a large part of the agricultural population. This has its good side in so far as it has prevented party passion from seizing on the bulk of the nation and making the struggles of the Chamber provoke outbursts of violencc over the country. But it has been also unfortunate in having failed to keep the deputies in order, to condemn intrigues, to discourage the creation of small groups, to make the parties feel their responsibility to the nation. If parliamentary parties were formed on well-defined and permanent lines, the policy approved by a majority at a general election might be steadily pursued until the country changes its mind, or some conspicuous error brings about the collapse of a ministry.

(*e*) ..... Since the death of Gambetta no single leader of dominating personality has arisen. Democracies need men who by their genius, or by the strength and worth of their characters, can become not merely leaders but inspirers of a party. The fore-

most men of the last forty (now sixty) years have been parliamentary rather than popular chiefs." [1]

The Ministry and the President. It has been mentioned that the President of the Republic nominates the president of the council of ministers and ratifies the appointment of other ministers. There are many other points in the working of the parliamentary system in France at which the ministry and the president come into contact. The relation between the President and the Ministry is prescribed by the Constitution. Thus according to the constitutional laws of the Republic :

1. Every action of the President has to be countersigned by a minister. The President is irresponsible while a minister is responsible.
2. The President is not responsible for anything except in the case of high treason. But ministers are responsible for all their acts collectively as well as individually.
3. The President can communicate with the Chambers by means of messages, but these messages are read at the tribune by a minister.
4. The ministers can speak in both the Chambers and can take help from commissioners who are appointed by a decree of the President of the Republic.
5. The President presides at the meetings of the Council of Ministers.

Apart from the contact prescribed between the ministry and the President there are numerous occasions when a President may be usefully employed by the ministry or he may be cause of serious irritation to his ministers. For example, a President may often address appeals for national unity and for supporting the government, as was done by President Le Bren in March, 1937 when he broadcast a radio appeal for people's subscription for national defence. Of course the President would do such things with the approval of the Cabinet. There are hundred and one ways in which he can make himself useful to his ministers.

Conclusion. From the preceding pages it is obvious that the French cabinet system is full of serious flaws. Yet in spite of these flaws it has worked well and specially when the ministers and the prime minister were able men who had imagination, strength of character and honesty of purpose.

QUESTIONS AND TOPICS

1. Compare and contrast the working of the French and English cabinet systems ?
2. Compare and contrast the position and powers of the French premier with those of the English prime minister ?

1. Bryce Modern Democracies, (1920), Vol. I, pp. 297—291.

3. Do you agree that the instability of the French cabinet leads to discontinuity in the policy of the government? Give reasons for your answer.

4. How do you account for the instability of the French cabinets?

5. Briefly discuss the relation between the ministry and President of the Republic.

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Chapter 18.

POLITICAL PARTIES.

To-day political parties are accepted as a convenient as well as necessary means of democratic control. They are inevitable in a democracy. They act and react on one another. The rise of political parties is due to democracy and the efficient working of democracy depends on political parties. The function of political parties may be compared to that of lawyers in the law courts. They produce arguments; the jury decides. In the same way political parties put forward candidates, draw up platforms, conduct campaigns and thus enable the electorate to work efficiently. They explain all the pros and cons of a problem and formulate questions on difficult and different problems which the electorate can answer with an affirmative or negative.

French Parties differ from English and American Parties. Though political parties exist wherever democratic government exists, yet they are not always of the same pattern. Their type depends on political circumstances and thus they vary with political conditions. For example, there are political parties both in England and America, but there is a marked difference in the working of political parties in both countries, while political parties in both the countries are quite different from those in the continental countries, and specially in France.

The nature and character of French political parties differ from the nature and the character of English and American political parties. French political parties are almost a puzzle to foreign students. But it must be pointed out that with the changing conditions in France the nature and character of French political parties are coming more and more in line with the English system of political parties. More of it hereafter.

In England each political party has its definite official programme, which is common to the whole party. In France there is no exact equivalent to the platform in America. In France the word 'Program' generally means 'profession' of the political belief of each individual candidate. Each candidate may present his profession to the country. It often may happen that two deputies belonging to the same party may have two different professions according to the sentiments or customs of their constituents. And the same deputy may change his profession from one ballot to another. Some writers say that French politics are purely an affair of sentiment and that French politics are directed by tendencies and not parties whereas in England and America it is the great political parties which control and direct politics. But to-day it is not quite true to say that French politics are directed not by parties but by tendencies.

It was largely so before 1901 but since that year there have come into being some political parties which have their definite programmes, subscription rules, propaganda machine and organisation just as any other great political party in England or America. Of course there is still found a large number of groups, but they can be identified under four or five heads. In England and America also there are small groups which have joined the larger political parties for certain purposes. Of course it is not our purpose to say that French, American and English party systems are identical, but it may be pointed out with some fairness to France that in the political conditions of that country her party system compares favourably with that of any other country. There may be multiple parties and groups but ultimately when it comes to forming and running the government combinations take place which divide the political groups into the government and the opposition.

Another feature of French political parties is the shifting membership of the groups even in the Chambers. Deputies and senators conveniently pass from one group to another, and some claim membership of two, three or even more groups at the same time. This would not be possible in America or England where party discipline is very strict. The French practice is the result of a lack of any definite, clear-cut, and fundamental lines of demarcation between groups. It is extremely difficult to differentiate between Socialist Republicans, Unified Socialists, Radicals, Radical Socialists, Federation of the Left, Democratic Republicans, etc., etc. It is not possible in the limited space of a condensed text book chapter to give a detailed and fuller treatment to the historical development of political parties in France, but it may be helpful to have a brief summary of party developments and recent coalitions.

Political Parties. The development of French political parties in the third Republic for the sake of convenience may be divided into four main periods:—

1. 1875—1900.
2. 1900—1914.
3. 1914—1919, the war period.
4. The post-war period.

1. The period 1875—1900 is the formation period. The political groups in the French Parliament were only parties in the making. Soon after the Constitutional Law of 1875 was adopted, the Monarchists ranged themselves on the extreme right or conservative side in the parliament. They consisted of three elements: Orleanists, Bourbons, and Bonapartists, also called Imperialists. They were in a minority in the first Chamber of Deputies elected in 1876, but secured a small majority in the Senate. But soon after they lost even this small majority in the Senate and since then as the Republic has grown in strength and importance they have dwindled in their numbers and importance. To-day their membership is

very small and they are a negligible factor in French politics. As a party the Royalists, as they may be called, maintain no national organization and have no formal platform.

On the radical side of the chambers were to be found Republicans or anti-monarchists, as they were called. After their victory at the polls in 1876 their speedy disintegration led to the appearance of seven factions. Each of these factions had its own ideas, leaders and all were unable to co-operate except in case of extreme pressure from without. In about 1884 a fusion took place as a result of which certain of these groups assumed the name of ' Radical Party.' There was another fusion which produced a party, first called the Opportunists, then the Moderates and after 1898, the Progressists, and after 1906, the Republican Federation or Union. This party has been the most conservative of the republican parties.

The Socialists also made their appearance as a political party during this period. They became an important factor in parliamentary proceedings, beginning about 1893.

During this first period the government was run by coalition ministries made up either of Moderates and Rodicals combining against Conservatives or Royalists or of one republican group combining with the Conservative Right against the other Republicans.

The Period 1900—1914. During this period important developments took place, the most noted being that the major groups began to develop elaborate party organization outside the chambers and to assume many of the features of English and American parties. Secondly a new conservative party came into existence on the side of the Right (1901). This party is known as the *Action Liberale Populaire*—or A. L. P.

Another important development which took place was the unification of Socialists of different brands into one party taking the name of 'Unified Socialists.' The party is not so united as its name suggests. Still it has been for some time one of the two or three more numerous parties in the Chamber of Deputies. It has an elaborate political and economic programme and a better organization and discipline than any other political party in France.

It must be noted that in addition to the existing parties four newer parties also came into existence during this period. These newer parties were—

(*i*) The Radical Socialists (1901). The membership of this party was mainly drawn from the lower middle class, small town business men, artisans, and small farmers. The party has had a very elaborate and practical programme and an efficient party organization. For most of the time the party was able to dictate national policies. Until 1919, it was the strongest party in the Chamber of Deputies, with the best organization next to the Socialists.

(*ii*) The Democratic Republican combination was also

formed in 1901. After 1911 it assumed the name of Democratic Republican Party.

(*iii*) The Socialist Republican Party appeared in 1911 as an offshoot from the United Socialists. It consisted of a group of idealists with strong leanings towards Socialism.

(*iv*) In 1913, another party under the name of the 'Federation of the Left' appeared. It is hardly distinguishable from the Democratic Republican Party.

The Period 1914—1919 The period is noted for the formation of the 'Sacred Union' of all political parties and groups to support the government during the War. Although several cabinets came into office during the war they were all based upon a broad foundation. After the outbreak of the was party politics was adjourned and small party issues were suspended. But after some time the Socialists could not find it possible to continue to support the government; they formed themselves into a group calling themselves Dissident Socialists. They became communists in the next period.

The post-war period. At the conclusion of the Armistice old party rivalries were renewed. This renewal was not along the old path, but along new and distinctive lines. The war had created new problems. Old programmes were of no use, therefore, most of the old parties revised their programmes to meet new post-war problems. New combinations and new groups appeared in parliament. These groups and combinations had no organization outside the Chambers. New reformed organizations also made their appearance, *e.g.*, New Democracy which stood for more complete separation of the legislative and executive branches of government; another new organization calling itself Fourth Republic advocated reorganization of the government on the basis of larger decentralization, called regionalism. Old party titles have changed somewhat; new splits and new combinations have taken place making the political map still more complex.

Present Political Parties and their Programmes. The political combinations in the French Chambers may be divided under two heads:

(1) Those which are parties in the true sense of the term. That is, those which have permanent local and national organization, definite programme, strict party discipline and finances; and

(2) Those groups which exist only in Parliament and have no foundation in the country.

The important parties in the Left are: the Radical and Radical Socialist, the Socialists and Republican Union, Socialist and Communist; the important parties on the Right are: the Democratic Alliance and the National Republican Party. These parties are organized in the parliament and in the country.

The political groups do not have the same names in the Chamber of Deputies and the Senate. They are not organized

in the country at large. More often than not a group is an offshoot of a regular political party; it is mostly formed to escape from party discipline, because each member of a group is independent to vote as he wishes; groups are also formed to increase a person's chances of placement on a committee. Yet they may be formed for regional interests; sometimes their formal formation may be due to the influence of a strong personality. The usual requisite for the formation of a group is the enrolment of at least fourteen members in the Chamber of Deputies; this number is necessary to secure appointment on all committees.

A group or a political party has only one platform to which its members both in the Chamber and in the Senate subscribe. But a group or a party may have several names, for example, a a party is known throughout the country as the National Republican Party while in the Chamber of Deputies it is known as the Republican Federation, and in the Senate as the Republican Union. According to W. H. Mallory, the state of political parties and their programmes in France is as tollows:

Parties of the Left (as in 1939—1940):

Radical and Radical Socialist Party. It bears the same name in the Chamber but in the Senate it is known as the Democratic Left. It is not only the largest, the oldest but also the greatest party in the history of the Third Republic. It believes in evolutionary policy and is in the position of an intermediary between the conservative and socialist parties. Its membership is mainly drawn from small farmers, retail merchants and middle class people. It is opportunist in forming combinations with other parties and groups.

Its foreign policy at the present time is not different from that of other parties. In the past it supported the League of Nations, Locarno Pacts, trade treaty with Russia, and progressive disarmanent.

In home policy, it upholds the priority and superiority of the Chamber over the Senate, advocates extension of communal autonomy, favours rights of public employees to union organization; advocates social reform, (but not state socialism), *e.g.* nationalization of large public utilities; advocates income, property, and business taxes and state monopolies. It is opposed to indirect taxes on articles of consumption; is in favour of laws for the protection of labour, favours free secondary education. Some of its leaders are Edourad Daladier (President of the Party, ex-Premier and Minister of National Defence); Edourad Herriot (Honorary President, Speaker of the Chamber of Deputies).

Socialist Party. It bears the same name in the Chamber as well as in the Senate. It is an adherent of the Second Internationale; it was founded in 1905 as a result of a combination of several Socialist parties. It follows the reformatory theory of Jaures. It advocates a moderate programme of Marxist Socialism. It is opposed to Communism; it supports democratic and syndicalist methods.

It has not been able to see success in its foreign policy programme which has become temporarily unworkable. It advocates international co-operation, supports the League of Nations, International Labour Organization, Locarno agreements and favours good Franco-Russian relations.

In home policy the Socialist Party advocates the abolition of the Senate, free compulsory secular education; is opposed to foreign loans, raising of custom tariffs, and consumption or indirect taxes. It demands economy in administration, and increased direct taxes; favours woman suffrage among other items of programme. Some of its leaders are Leon Blum (ex-Premier), Marx Dormoy (ex-Minister of the Interior), Andre Fevrier (ex-Minister of Labour), Jean Baptiste Lebas (ex-Minister of Posts and Telegraphs).

Socialist and Republican Union. It bears the same name in the Chamber, while it has no separate individuality in the Senate as majority of its members belong to the Democratic Left. It is composed of Socialists. Republican Socialists, French Socialists and Independents. Opportunism is its watch-word. It is midway between the Socialist and Radical-Socialist parties.

In foreign policy it supports the League of Nations and a direct understanding with Germany.

In home policy it advocates extension of state monopolies to achieve a degree of socialism. Some of its leaders are Paul Bancour (ex-Premier), Paul Ramadier (ex-Minister of Labour).

Communist Party. This party has the same name both in the Chamber and the Senate. It is the French section of the Third Internationale. It was founded in 1920 as a result of a split among the Socialists. It is one of the best organized parties in France.

It advocates full revolutionary programme; defends 'small' property. It functions mostly among 'red' trade unions of government employees.

In foreign policy it is nationalistic in outlook. In former times it was a cause of embarrassment to the Government with regard to colonial and military policies. Some of its leaders are Marcel Cachin (Senator), Clamamus, Jacques Dulcos.

Parties of the Right (as in 1939—1940).

Party of Democratic Alliance. Its members are known in the Chamber of Deputies as Left Republicans, or Independent Republicans. It has no separate identity in the Senate; majority of its members have joined Republican Union.

It was founded in 1920 and reorganized in 1936. It represents industrial and commercial middle class; advocates economic liberty, secularism in education etc.

In foreign policy, it upheld the Versailles Treaty. It has no unanimous opinion with regard to relations with Russia.

In home policy, it is anti-Socialist ; is opposed to strikes, specially in public services ; favours moderate administrative decentralization ; it is liberal in economic theory ; advocates a programme of social reform.

Some of its Leaders are M. Flandin (President of the Party, ex-Premier), Paul Reynaud (ex-Minister of Finance).

National Republican Party. In the Chamber it is known as the Republican Federation and in the Senate as the Republican Union. It is the most prominent conservative party. Its membership is recruited from the rich non-royalist aristocrats and magnates of industry and finance. It represents Union of Economic Interests and big industrialists.

In foreign policy it advocates strict application of peace treaties. It supported the Ruhr occupation by France, was opposed to the reparation agreement, considers disarmament utopian, and advocates defensive political and military alliances.

In domestic policy the party demands increase of the army and the navy, restoration of Church property, freedom of religious instruction, more powers for the President ; is opposed to labour organization and liberal industrial legislation ; is individualist in economic theory, favouring free operation of the law of demand and supply.

Some of its leaders are Louis Marin (ex-Minister of State without portfolio), Camile Blaisot (ex-Under-Secretary of State).

Popular Democratic Party. It has the same name in the Chamber but has no counterpart in the Senate. It is not really a party, nor it is merely a group since it has an annual congress. It is the fusion of the residue of the old Catholic liberal factions. It advocates Christian Socialism, strong paternal government. It sympathises with Republican Union. Its leader is Paul Simon.[1]

QUESTIONS AND TOPICS.

1. Compare and contrast the English and French political parties in regard to party discipline, and attitude to politics.

2. What are the various political parties in France ? Discuss the programme of any one of them.

3. What part is played by French political parties in the working of the French parliamentary system ?

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CHAPTER 19.

LOCAL GOVERNMENT IN FRANCE.

Centralization in France. France, like England, is a unitary state. All powers of government vest in the legislative and executive organs of the central government. There are no territorial divisions that the French Parliament can not abolish or modify at will ; there are no rival authorities. All power emanates from and is exercised on behalf of the central government. This is different from what is found in the American Federal system. In America the constitution gives specified powers to the central or national government and leaves the residuary powers, which cover quite a wide field, to the states. In the feudal days local patriotism was very strong in France, but gradually and under the stress of economic forces local patriotism gave way and became reconciled with the idea of French unity. Thus to-day France is a highly centralised state in which the powers of even the lowest local officers are defined by a law of the national government and in the exercise of which their conduct is subject to detailed supervision of the central government.

Brief History of Local Government. The history of local government in France may be divided into four phases. During the first phase, *i. e.*, before the Revolution of 1789, the French governmental system was highly centralized, stupidly bureaucratic, badly wasteful and superbly inefficient. All affairs in local bodies were regulated and controlled to the minutest detail by the central government. Thus one can say that there did not exist local government in any true sense in pre-revolutionary France.

During the second phase which is covered by Napoleonic regime the country came back to thoroughgoing centralization. The inefficiency of the pre-revolutionary era disappeared and the local government bodies came under even a greater control of the central government than before. During the third phase (from Napoleon to the Third Republic) the Napoleonic system which was ' simple, symmetrical and bureaucratic ' but highly centralized continued. It is found even to-day in most of its features. The fourth phase of local government is the present period which is considered below.

Present system of local government. For purposes of local government France is divided into Departments which are divided into Arrondisements which in turn are divided into Cantons which again are divided into Communes. Of these only the department and the commune are important. The arrondisements and the cantons have no corporate personality and hold no property, and exist mainly as judicial and electoral units.

The Arrondisement. The number of arrondisements was two hundred and eighty-one in 1936; they are numbered and not named. Each arrondisement on the average is composed of eight cantons and has an elected council called the Arrondisement council; the council is elected for six years and participates in the election of Senators. It also distributes among the communes their respective shares in the direct taxes assigned to each arrondisement. The sub-prefect acts simply as the agent of the prefect of the department and relieves him in minor functions. He may be said to be in the nature of a letter-box of the prefect. It is often suggested that with so much improvement in the means of communication the office of the sub-prefect has less reason for its existence than it had at the close of the eighteenth century, the time of its origin. According to Professor Barthelemy 'the sub-prefects were then like branches of the business firm; branches are useless when it is infinitely easy to get to main establishment.' But what is required is not the abolition of the sub-prefect's office but a wider discretion and greater independence for him thus relaxing the control of the prefect over him.

The Canton. It consists of twelve communes on the average. The number of cantons in 1936 was 3,028. It is a seat of a justice of the peace; it is not an administrative unit.

The Department. There are ninety departments in France. The head of the department is the prefect who is appointed by the minister of the interior. He is appointed for no fixed term and may be transferred, removed or placed on half-pay by the minister of the interior.

The prefect is an important official; he is an agent of the central government and an executive head of the department in the administration of local affairs. As an agent of the central government he carries out detailed instructions of the government; has a wide range of powers extending to all public matters in the department; appoints many of his subordinate officials; issues by-laws and ordinances. As the department has the representatives of all the Ministries, he is obliged to be in correspondence with at least six other members of the ministry with regard to state services.

Political activities. As agent of the national government the prefect is obliged to take part in activities which are entirely outside his administrative work. His masters, the ministers, are politicians; they are occupied more with political matters than with administrative business. The minister of the interior uses him as a medium to keep in touch with local political situation to make parliamentary elections favourable every four years. He exerts himself in municipal elections also.

Establishment. In the discharge of his multifarious duties the prefect is assisted by a secretary-general and a Prefectorial Council of three appointed by the national government. This Prefectorial Council audits accounts, advises the prefect and serves as a court of first instance in the trial of cases arising

under administrative law*. The prefect is not bound by its advice.

As an Executive Head. The prefect in conducting the affairs of the department is associated with a general council which is a representative body. The general council consists of seventeen to sixty-seven members, each canton sending one representative. Members are elected for six years, one-half retiring every three years. The council elects its own chairman and makes its own rules of procedure. Its sessions are public. It can be dissolved by a governmental decree It holds two regular sessions a year. It has a standing departmental committee which must meet at least once a month. It fixes departmental taxes ; approves loans : maintains roads, and other public works, colleges, lunatic asylums, relief institutions etc. It passes resolutions on matters other than political and gives opinion on matters referred to it by the central government. It needs to be pointed out that within the range of its powers it is limited by the fact that business can come before it only on the initiative of the prefect. And its decision though final in certain matters, is subject to approval in others by the central government before it takes effect.

The Commune. The commune is the basic territorial unit of local government. France was divided into 38,014 communes in 1936. All the communes (with the exception of Paris and Lyons) are on equal footing, have the same form of constitution, powers and duties, but differ in area and population.

Communal Council. Each commune has a council consisting of ten to thirty-six members according to population. It is elected by manhood suffrage for four years. Any rate payer who is twenty-five years of age is entitled to stand for election provided he is not insane, criminal, a public official, defaulter, bankrupt and insolvent. It holds four ordinary sessions a year. But special sessions may be convoked by the prefect, sub-prefect or mayor. Usually its sessions last for fifteen days, but the budget session may last six weeks.

It enjoys restricted powers ; most financial proposals require the sanction of the prefect and the general council of the department ; it may be suspended by the prefect and dissolved by the central government.

The Mayor. Each commune has a mayor who is elected for four years from amongst the commune councillors. In the performance of his duties he may be assisted by one or more Assistant Mayors. The maximum number of assistant mayors allowed to a commune is twelve, but Lyons is an exception and has nineteen assistant mayors. All are honorary officials. According to Raymond Poincare, the mayor ' watches over the life, health, tranquillity and even the slumber of those in his administration.' The mayor may be suspended from office for one month by the prefect of his department, for three months

**Note.* The system of Administrative law and law courts is dealt with in Chapter 20.

by the minister of the interior, and may be dismissed by the President of the Republic.

The Government of Paris. Capitals of states mostly possess systems of government peculiar to themselves. Paris is no exception to this rule. There are two reasons why Paris should have a reparate system of local government ; these reasons are general and political. Some European states have smaller poulation and smaller budgets than those of Paris. Politically who holds Paris holds France ; all the revolutions in France were made by Parisians. The government feels an intimate anxiety to maintain order in Paris because there is no guarantee of its good behaviour. Therefore its local government is far less decentralised than it is in the case of other local divisions.

For purposes of local government Paris is considered technically a commune, but has officers and powers different from any other French commune. There is no mayor of the city as a whole ; but there are two co-ordinate prefects : (1) The Prefect of Seine and (2) the Prefect of Police. Both are appointed by the President of the Republic and removable by him ; but responsible to the minister of the interior.

The Prefect of the Seine combines in himself the functions of a mayor and a prefect, but does not possess the police power which belongs to the prefect of police. According to Professor Munro, the Prefect of Seine wields greater administrative power than is possessed by any other local official in France or in any other country.

The Prefect of Police, like the Prefect of Seine, possesses the combined police powers of a prefect and a mayor. He is responsible for the maintenance of order as well as for the regulation of traffic, the enforcement of sanitary laws and many other matters.

The Municipal Council, Like other communes Paris also has a municipal council consisting of eighty members (four from each ward) elected for four years. Its powers resemble those of the ordinary municipal council. It does not elect the executive officers and therefore has no effective influence upon them.

QUESTIONS AND TOPICS.

1. Distinguish between centralization and decentralization ; central government and local government.

2. What are the various local government divisions in France ? Discuss the local government of a department in France.

3. Write a short note on the government of Paris.

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CHAPTER 20.

FRENCH JUDICIAL SYSTEM.

Introductory. England developed at an early date a national spirit and a royal power by mastering feudalism and feudal jurisdiction. This resulted in the establishment of a united judicial system in that country. But in France upto 1789, there was no system of common law ; justice was administered by edicts, decrees and ordinances issued by the French King. The Revolution of 1789 destroyed monarchy and with it the judicial system. A single system of law and procedure of law courts was established by the Code Napoleon.

General characteristics of the French Judicial System.

1. French courts are not bound by precedents ; they are independent to give decisions. Sachd ecisions may be or may not be in conformity with their previous decisions in parallel cases. This is different from what obtains in England.
2. The French courts have a theoretical authority to declare the unconstitutionality of any law not in conformity with the Constitution which is the supreme law of the land. But this right has never been exercised, thus proving that separation of powers is more complete in France than elsewhere. In America judiciary has the power to declare the constitutionality or unconstitutionality of a law made by the American Congress.
3. The French courts are local in their character. There are no circuit courts.
4. There is a dual system of courts in France—Ordinary Courts and Administrative Courts. In England and America all kinds of cases are tried by the ordinary courts whether the controversy involves private individuals only or government officials in the discharge of their duties. Generally the same kind of laws applies to them alike, and the same rules of procedure govern all such trials. This is not the case in France. The prosecution of crimes and matters of private law are ttied by one set of courts—Ordinary Courts—while questions involving the power, conduct, and liability of government officials are handled by another set of courts—Administrative Courts.

We now proceed to consider each of these classes of courts.

The Ordinary Courts. There are five categories of ordinary French law courts, *viz* :—

1. Canton Courts ;

LIBRARY,

2. Courts of Arrondisement ;
3. Courts of Appeal ;
4. Court of Cassation ; and
5. Court of Assizes.

Canton Courts. In every canton (there were 3,028 cantons in France in 1936), there is a court presided over by a justice of the peace. His function is not so much to pass judgements over law suits as to avoid them. Due to his efforts, on the average, forty per cent. of the law proceedings are amicably settled. The justice of the peace is appointed by the President of the Republic—actually by the Minister of the Interior. To be qualified to be appointed a justice of the peace a person must hold the first law certificate ; he receives a salary of 2,500 to 5,000 franks per annum. His jurisdiction extends to petty offences—cases which involve not more than three hundred francs or crimes entailing a penalty of at least five francs. Appeals from his decision may be taken to the Court of Arrondisement. The justice of the peace acts as an important political agent of the government. This affects his position : he can not be impartial.

Courts of Arrondisement. This is the next higher court. In each arrondisement there is one such court. It consists of one president and two more judges.

Jurisdiction. It possesses both original and appellate jurisdiction. Its decisions are final in cases involving more than fifteen hundred francs. When it sits as a civil court it is known as ' Tribunal Civil ', when sitting as a criminal court it is known as ' Correctional Court '. It hears criminal cases in which the penalty is more than five francs. Most of these courts are divided into ' chambers ' (sections) ; some try civil cases, others criminal.

Courts of Appeal. There are twenty-six Courts of Appeal in France. The jurisdiction of a court of appeal extends over a judicial province which may contain from one to seven departments.

It is divided into three chambers or divisions : (1) a Civil Chamber ; (2) a Criminal Chamber and (3) an Indictment Chamber. The Indictment Chamber decides whether persons charged with misdemeanour shall be brought to trial. Each section consists of five judges or councillors. Its judgement is final in respect of the facts of the case under trial. But if its interpretation of the law is disputed appeal may be taken to the Court of Cassation which is the supreme court of France.

The Court of Cassation. This is the supreme court of France. It has been mentioned above that the decision of the Court of Appeal is final respecting the facts of the case under trial. But what if the law applicable to those facts is disputed ? Then appeal is taken to the Supreme Court. In this case facts are not questioned. Its only function is the interpretation of law applicable to facts. This practice ensures a uniformity of interpretation of law throughout France.

Composition. It consists of forty-nine judges or councillors and is divided into three sections :

1. The Civil Section ;
2. Chamber of Requests ; and
3. A Criminal Section.

Each section consists of sixteen judges. The court is presided over by a chief judge who may preside over any section he pleases ; he usually presides over the Civil Section.

Procedure. The decisions of the Court are invalid unless eleven judges are present on the bench of each section. Appeals are first tried by the Chamber of Requests with the exception of criminal cases. When appeal is refused, judgement of the Court of Appeal becomes final and the case is closed. But if appeal is granted the Civil Chamber holds second trial regarding the matter of law. If decision of the Chamber of Requests is reversed, the judgement of the Court of Appeals becomes final and the case is closed. But if the decision of the Chamber of Requests is confirmed, the case is sent for re-trial in a second Court of Appeal. If the second Court of Appeal confirms the judgement of Cassation Court, the case is closed. If the second Court of Appeal does not concur, the case is referred back to the Court of Cassation.

What does it do now ? It holds a solemn hearing with three sections sitting together and with a minimum of thirty-three judges in attendance. If its decision confirms a Civil Chamber decision, the case is sent to the third Court of Appeal which is now under obligation to ratify the final decision of the Court of Cassation.

What a long drawn procedure, but Frenchmen consider it a good guarantee of justice.

The Court of Cassation does not only possess the supreme jurisdiction, which sees that law is properly observed by all other courts, it is also the supreme council of magistracy. It possesses the power to pronounce punishments against the permanent magistrates even to the extent of dismissal. The judges of the Court of Cassation are themselves removable at any time by the President of the Republic on the recommendation of the minister of justice. But as a matter of course they hold office during good behaviour and are seldom removed, and that too only on well-justified grounds.

Courts of Assizes. Serious cases over which a jury has jurisdiction are tried before special courts called the Courts of Assizes. These courts are not a separate rung in the ladder of regular courts. A court of assizes meets every three months in the chief provincial town and is not a permanent court.

It consists of a president, a councillor from the district court of appeal. assisted by two more judges. The function of the jury is merely to give a verdict. Appeals from the court of assizes may be taken to the Court of Cassation.

The Administrative Courts. The underlying principles of the institution of administrative courts in France may be summed up as follows :

1. Necessity to afford the public servant sufficient power to carry out the designs of the government.
2. To keep the uniformity of administration without making administrators afraid of being summoned before an ordinary judge to explain their official conduct.
3. Interests of the state are above those of the ordinary individual.
4. The theory of separation of powers between the executive and the judiciary—regular courts should have no jurisdiction over administrative matters.

The Administrative Courts are of two kinds :

1. Prefectorial Council in each Department.
2. The Council of State.

The Prefectorial Council. It is the administrative tribunal of the first instance. Suits by private individuals against subordinate government servants are tried in this court. Before the hearing of the case an official inquiry is held ; it decides disputes over tax assessments, highways etc. Its members are appointed by presidential decree on the nomination of the minister of the interior ; members are not paid highly, with the result that men of great ability seldom accept the office ; they must have ten years' experience of government service and legal training. Appeals from the Prefectorial Council may be taken to the judicial section of the Council of State.

The Council of State. This is the supreme administrative court. It enjoys great reputation and stands higher in the esteem and confidence of the French people. It possesses greater independence of governmental control. It has a dual role. On the one hand it is a political council which acts as an advisory body to the ministry upon a large number of political questions such as, matters concerning civil and military pensions, public works etc. This advisory duty is performed by a group of twenty-one persons who are quite distinct from those who serve in a judicial capacity.

The judicial work of the Council is of much more importance. A group of thirty-five councillors, who are practising lawyers of higher rank and who hold office for three years, attend to the judicial work of the Council. Two-thirds of these councillors must possess a mature knowledge of law and must have experience of service for a considerable period in certain subordinate positions connected with the council—positions which they must win in competitive examinations. The remaining third must be men of proved ability who either have achieved eminence at the bar or have held responsible posts in the higher ranks of government service.

In its appellate jurisdiction it hears appeals from the Prefectorial courts in the Departments ; it has original jurisdiction also in certain important cases.

The Council of State has progressively built up an administrative law and has so worked it that Frenchmen look upon it as 'the best judge against the state.'

The Court of Conflicts. In France as there are two kinds of jurisdictions as said above, disputes between the two are likely. Who should decide these disputes ? These disputes are decided by the Court of Conflicts. In such cases it has to give a casting vote between proper judicial order and the administrative jurisdiction. Therefore the composition of the court resembles a Court of arbitration. The court consists of the Minister of Justice as the president, three members of the Council of State elected by their colleagues, three councillors from the Court of Cassation and two judges elected by the foregoing members.

Special Courts. There are two kinds of special courts which are composed of non-profesional judges :

1. **Special Commercial Tribunals.** They are established in the largest business centres ; they are about two hundred in number and are elected for two years by all the merchants of the district. They are called 'Consular Judges.' They decide disputes arising out of commercial transactions. Appeals from their decisions may be taken to the Court of Appeal.

2. **Courts of Industrial Arbitration.** These are made up of equal number of employers and employees. A justice of the peace presides over its deliberations. Their function is to settle labour disputes specially relating to wages and compensation for unjustified discharge. Appeals from their decision may be taken to the civil tribunal.

Administrative Law. The administrative courts in France dispense administrative law. This law has to do, on the one hand, with the rights and duties of government officials, and on the other, with the rights and liabilities of private individuals in their relation with government officials ; and the procedure by which these rights and liabilities may be enforced are also included in this system of law. It has been observed that in England and America ordinarily such matters are determined by the ordinary laws administered by ordinary courts. But in France questions of official misconduct, negligence or faulty judgement and the question of damages arising from government undertakings must be settled in special courts and under special rules different from those which apply to ordinary cases between private individuals. At first this seems to place government officials in a specially privileged class ; but the actual working of the system is not only fairer to the public official, but also far more advantageous to the private citizen than the English method, because it affords him a real and a prompt redress. and not merely the academic remedy of a law suit against a government employee who is protected and enjoys immunities

in several mysterious ways. It can be said without any fear of contradiction that the system of administrative law and administrative courts as a whole has some great practical merits and is quite suited to the spirit of French institutions. It has worked so well that it is not looked upon by the French as a barrier to the assertion of their individual rights. On the contrary, it is regarded by them as a palladium of their liberties, and a safeguard against arbitrary action of the government.

QUESTIONS AND TOPICS

1. What are the general characteristics of the French Judicial system and how does it differ from that of England ?
2. Write a short essay on the Council of State and estimate its importance in the French judicial system.
3. What is meant by administrative courts ? Describe briefly the organization of the Court of Conflicts.

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Chapter 21.

THE NEW CONSTITUTION OF FRANCE (1941).

Introductory. France was attacked by Germans on May 10, 1940 and the evacuation of the British Expeditionary Force and a part of the French Army began on June 1, 1940 as a result of heavy fire from the sky and the shore. By June 5. 1940 the German attack on France was intensified. The Maginot Line was broken and German mechanised forces proceeded under cover of bombers and tanks and the French Government was shifted to Bordeaux. On June 11. 1940 Italy declared war on France and England. German troops entered Paris and occupied Versailles on June 14, 1940. On June 17, 1940, the Renaud Cabinet resigned and Marshal Petain became Premier and announced cessation of hostilities.

On June 23, 1940 Armistice was signed in the historic railway dining car in the forest of Compiegnie. The Armistice consisted of 27 items of which the most important were three :

1. the whole of Northern France and the Atlantic coast will be under German occupation :
2. the Army and Navy will surrender arms, and
3. French subjects must not wage war against Germany in any way.

A similar Armistice was signed between France and Italy at Rome as a result of which France made certain concessions regarding French possessions in Africa.

The New Constitution. After the armistice between France and Germany was signed a series of meetings were held at Vichy, the headquarters of unoccupied France, as a result of which a resolution conferring full powers on the Government under the authority of Marshal Petain was approved by the Senate by 225 to 1 vote and by the Chamber of Deputies by 395 to 3 votes on July 1, 1940.

The following is the text of the resolution :

'The National Assembly confers full powers on the Government of the Republic, under the signature and authority of Marshal Petain, with a view to promulgating in one and several decrees the new constitution of the French State.

"The constitution must safeguard the rights of labour, the family and the fatherland.

"It will be ratified by the assemblies created by it."

French National Assembly (*i.e.*, Senate and Chamber sitting together) meeting in secret session at Vichy on July 10, adopted the resolution giving full powers to the Government by 569–80 votes. Mr. Herriot, who presided over the Chamber of Deputies,

pointed out that the Parliament will lose its essential power (*i.e.*, the power to overthrow cabinets) by virtue of this resolution; that Government would no longer be responsible to Parliament; and that the Legislative Power would be vested in two Chambers, one of a potential character and the other representing occupational interests. Special attention is to be paid to the education of youth and a social character is to be created governing the relations between employers and workers.

Decrees were issued giving Marshal Petain powers as President and Prime Minister, with the title of Chief of the French State in succession to the outgoing President M. Albert Lebrun.

Three Constitutional Acts laying down the new regime in France were signed by Petain on July 12, 1940. The Acts are:—

Constitutional Act No. 1:—We, Philippe Petain, Marshal of France, declare that we assume the functions of Chief of State.

In consequence we decree: Article II of the Constitutional Law of Feb. 25, 1875 is abrogated. (Art. II of Constitutional Law of Feb. 25, 1875 stated: "The President of the Republic is chosen by an absolute majority of votes of the Senate and Chamber of Deputies united in National Assembly. He shall be elected for seven years. He shall be eligible for re-election.")

Constitutional Law No. II:—This Act fixed the Powers of the Chief of State. The Act is as follows—

We decree:

ARTICLE I.

1. The Chief of French State has full Governmental powers. He appoints and dismisses Ministers and Secretaries of State who are responsible only to him.

2. He exercises legislative power in the Council of Ministers until the formation of new Assemblies. After their formation, in the event of tension from abroad or grave internal crisis, he also exercises that power on his decision alone and in the same manner. In similar circumstances he can take all measures of a budgetary or fiscal nature.

3. He promulgates laws and ensures their execution.

4. He makes appointments to all civilian and military posts which are not otherwise provided for by law.

5. He continues to be in control of the army.

6. He has the right of amnesty.

7. The Ambassadors and envoys of foreign powers are accredited to him. He negotiates and ratifies treaties.

8. He can declare a state of siege in one or several portions of the territory.

9. He cannot declare War without the previous assent of the Legislative Assemblies.

ARTICLE II.

All dispositions of Constitutional Law of February 24 and 25, 1875 and of July 16, 1875 which are incomptible with the present Act are abrogated.

(The Constitutional Law of Feb 24, 25 and July 16, 1875 defines the powers and status of the Senate, Chamber of Deputies, President and Council of Ministers.)

Constitutional Act No. III :—

We decree;

ARTICLE I.

A Senate and a Chamber of Deputies will remain in being until the Assemblies provided for under Constitutional Law of July 10, 1940 are formed.

ARTICLE II.

The Senate and Chamber are adjourned until further order. Henceforth they can meet only when convened by the Chief of State.

ARTICLE III.

Article I of Constitutional Law of July 16, 1875 is abrogated. (This Article states: "The Senate and the Chamber of Deputies shall assemble each year on the second Tuesday in January, unless convened earlier by the President of the Republic. The two Chambers shall continue in session at least five months each year. The Sessions of the two Chambers shall begin and end at the same time.")

Proposed plans for provincial autonomy have been postponed until after the war. Marshal Petain has appointed Governors for each of the French provinces.

CONSTITUTION ACT NO. 4.

This Act deals with the substitution for and succession to the Head of the State. It reads :

We, Marshal of France, Head of the French State, By authority of the Law of July 10, 1940, Decree :

ARTICLE 1.

If, for whatever reason, before ratification by the Nation of the New Constitution, we shall be prevented from exercising the function of the Head of the State, M, Pierre Laval, Vice-President of the Council of Ministers, shall automatically assume it.

ARTICLE 2.

In case M. Pierre Laval should be prevented, for whatever reasons, he would in turn be replaced by the person whom the Council of Ministers should, by a majority of seven votes, designate. Until the qualification of such person, functions would be exercised by the Council of Ministers.

Vichy, July 12, 1940.

CONSTITUTION ACT NO. 5.

This Act relates to the Supreme Court of Justice.

ARTICLE 1

Article 9 of the Law of February 24, 1875 and Article 12 of the Law of July 16, 1875 shall be repealed.

Note.—Article 9 of the Law of February 24, 1875 says: "The Senate may be set up as a Court of Justice to try either the President of the Republic or the Ministers and to take cognizance of attacks committed against the security of the State."

Article 12 of the Law of July 16, 1875 empowers the French Chamber of Deputies to indict the President of the Republic or the Ministers before they are tried by the Senate. It also authorises the President of the Republic to set up, by order in Council of Ministers, the Senate as a Court of Justice to try any person accused of treason against the French State.

Both these articles have been repealed by the Petain Decree embodied in Article 1 (above) of the Constitution Act No. 5 of July 10, 1940.

ARTICLE 2.

A Supreme Court of Justice shall be set up of which the organization, competence and procedure shall be regulated by law.

Vicly, July 30, 1940.

CHAPTER 22.

THE GOVERNMENT OF THE UNITED STATES OF AMERICA.

HISTORY OF THE CONSTITUTION.

The constitutional history of the United States of America may be said to begin with the early colonisation of the country. During the 16th and early 17th centuries, Englishmen, being persecuted at home for their religious views, or from motives of economic exploration, began to pour in America and settled in the thirteen colonies—New Hampshire, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia. Massachusetts and Rhode Island. These colonies were generally divided into three kinds: 1. '*Charter Colonies*': These Colonies had Charters from the King of England as the English trading companies in other parts of the world had. 2. '*Proprietory Colonies*': These Colonies were owned by rich proprietors who had obtained charters from the King for that purpose. 3. '*Crown Colonies*': These Colonies had neither Charters nor were owned by the proprietors: they were under the direct control of the Crown.

Social and Religious Outlook. There was a great diversity of race, religion and social manners among the people of these colonies. Spaniards, Dutch, Germans and French had also come with the English and the native population was also there. But the English either out-numbered or predominated the others The Red Indians were driven out or exterminated. Among Englishmen, there were Puritans, Protestants, Dissenters, Roman Catholics and those who belonged to the Church of England. The geographical and ethnological conditions of the whole country were of varied character. The North became mainly an industrial centre; the centre was famous for Indian corn, and the South produced tobacco. It all resulted in the separation and isolation of different colonies.

Political Machinery. The form of government differed from colony to colony. At the head of the government, there was a governor. He was assisted by a council. In certain states, he was nominated by the Crown; in others, he was appointed by the proprietors; and in the rest, he was elected by the people themselves. The position of the governor was that of a Constitutional head. He was the representative of the King of England. The governor had the right of vetoing legislative Acts and the appointment of officers was exclusively his function. He was the head of the national militia in each Colony.

The position of the Governor was not very sound. He had two masters to serve—one the Crown, as the governor was its representative, and, the other the legislature, which

supplied him with money for the due performance of his duties. His responsibility was thus divided.

There was a legislature also. The legislature consisted of two chambers except in three colonies. The number, the organisation, the suffrage, the voting and election methods, differed from colony to colony. There was no uniformity. It is interesting to point out here that in America, at this time, the suffrage was more liberal and democratic than it was in England. The functions of the upper chambers were more executive and judicial than legislative. It was also an advance over the bicameral system in England where the upper house still exercised enormous legislative powers.

The colonies had a system of judicial courts, which administered the common law of England, which the colonisers had brought with themselves from Great Britain. They were not much subject to the authority of the Privy Council. Until 1750 appeals to the Privy Council were not common. There was a system of local government as well. In northern Colonies, the unit was the town and in the southern, the unit was the county.

Control by the King. The Colonies owed allegiance to the King of England and not to the Parliament. "America is not part of the dominions of England, but part of the King's dominions," remarked Benjamin Franklin[1]. They detested the legislative control of the British Parliament. The King exercised control over these colonies through the Board of Trade and the Privy Council. The former dealt with the commercial matters and the latter with political. Thus Parliament had no direct control except through influencing these bodies.

With all these differences in religious, social and political outlook of different colonies, there was one central point where they all united. They believed in the basic principles of civil liberty and self-determination, which they had inherited from England. The Bill of Rights, the Habeas Corpus Act and the Magna Carta still held a firm hold on their minds. This inheritance led them to revolt against the mother country. The British Parliament imposed certain taxes on them without their previous consent. The Colonisers protested and 'No Taxation without Representation' became their war cry. The already detested parliamentary control. Then there were certain other economic causes which led to hostility between the mother country on the one hand and the colonies on the other. These and many other causes led to the well-known Revolution —the War of American Independence of 1776.

The situation was curious. The Colonies were small units and were not able to offer a united front to the mother country. Thus a need was felt to unite, as four Colonies,—Plymouth, Massachusetts Bay, Connecticut, and New Haven, had confederated in 1643 to offer a united front to the Indian attacks.

1. Quoted by Munro in 'The Government of the United States.' (1932) p. 16.

Therefore, in 1774 a continental congress was called at Philadelphia. Delegates from all the colonies, except Georgia, attended this Congress. The Congress drafted resolutions to be sent to the Home Government and pledged to offer a united resistance. They agreed to meet next year also.

In 1775, another session was held again at Philadelphia, which entrusted Washington with the command of their forces and took upon themselves to issue paper money on joint credit.

On July 4th, 1776, the Colonies severed their allegiance to the King of England and became independent and sovereign states. They issued a Declaration of Independence, in which they said, that they " solemnly publish and declare, that these Colonies are, and of right ought to be, free and independent states ; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved ; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do." Thus the Colonies became States independent of each other.

After severing their allegiance to the British Crown, the Colonies decided to unite " into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare." Hence, they adopted a confederation on the 15th November, 1777. The Government created under this confederation was a weak government The Colonies (now States) did not like to hand themselves over to another master. They retained sovereignty with themselves..

Scheme of Government under Confederation, The United States created a Congress to deal with international relations, to regulate the uniformity of coins and weights and measures, to take charge of the land and naval forces, and to establish and regulate post offices, and to apportion common expenditure between the several States. This could be done only if nine States concurred with the Congress. It could ask certain States to contribute in men and money. but could never compel. It had no power to tax, or to regulate trade, or to settle disputes between different States.

Thus the powers of the Congress were very small. It was too weak.

A provision was made for a committee to carry on the work of the Congress when the latter was not in session. The officials of this committee were appointed by the Congress. They included, among others, the Secretary for War, Secretary for Foreign Affairs and Superintendent of Finance.

In 1781, the war with England resulted in the victory of the Colonies. New problems arose. Debts were to be paid, currency was inflated. Prices rose, farmers and manufacturers were dissatisfied, different States were huHing tariffs against each

other. There was economic chaos. The States were not so enthusiastic about union now as during the war ; there was no momentous spur. The ideas of Locke and Montesquieu were current. There was confusion in the political sphere too. What was the Congress doing ? Could it be successful in solving these problems ?

Why Congress could not meet the Situation. The Congress did not interfere with these problems. Why ? Because, it suffered from all the defects from which confederations and instruments created under confederations suffer. The Congress was merely a delegatory body. It was a group of ambassadors. "With the various legislatures its relations were those of a diplomatist. When it sought to create an army it needed to ask leave, and to accomplish that end was forced to submit to terms not only ignominous but contrary to reason as well. When it suited a State to furnish a regiment, it claimed and exercised the right to appoint its officers. Military organisation under such conditions was clearly impossible," thus Oliver describes the position of the Congress.[1] It lacked real power. The Congress had no power of taxation and hence how could it carry on a government ? Nor it could borrow unless nine States concurred ; and the credit of America was very low due to war. It could not regulate commerce or trade. Commercial rivalry between the different States was so high that Washington said, 'We are one nation to-day and thirteen to-morrow.' It had no coercive authority to enforce its decisions. It could deal only with the States, which may obey its orders or may not, but not with the people directly. Thus, the Congress. being incapable of regulating commerce, organising defence and raising taxes and borrowing money, lost its authority and slowly went out of existence in 1787.

Importance. Though the confederation of 1776 did not last long, yet it left certain basic principles which were adopted by the United States in their next constitution. It made for a lasting union of the thirteen states, but at the same time gave the conception of a weak government. It pointed out the defects and good points in its working and the former were deleted from the new constitution. It provided a laboratory for political experiments in the field of government.

New Constitution. With the dwindling authority of the Congress, certain States, like Maryland Virginia, felt a need for closer union, and hence they called a conference of delegates of all the States at Annapolis in 1786. But this was not well attended. However, the convention passed resolutions pointing out the defects of the confederation and proposing its revision. The Congress adopted these resolutions. The States were called upon to send delegates to a convention at Philadelphia. They sent their delegations accordingly. They were elected indirectly by the State legislatures or the Governors on the authority of the legislature.

1. 'The Life of Alexendra Hamilton,' p. 102.

These delegates met at Philadelphia in May, 1787. They declared, " We, the people of United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." They framed the present constitution, which is discussed in the succeeding pages.

QUESTIONS AND TOPICS.

1. Briefly describe the constitutional history of the U. S. A.
2. Account for the failure of the confederation in the United States.

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CHAPTER 23.

NATURE OF THE CONSTITUTION.

The constitution as envisaged in the constitutional document of the United States is based on two fundamental principles. Firstly, the Fathers believed in a weak government. They feared a strong government, they detested it. "Constitution was the expression not only of a political faith but also of political fear," says Herbert Cooley. Secondly, the Fathers wished to make the new world safe not for democracy but against democracy. Roger Sherman, a delegate to the Philadelphia Convention, wrote, "The people should have as little to do with the government as possible." They wanted to safeguard the interests of 'property' and that could be done only by keeping the government away from falling into the hands of masses. This was done by proposing indirect election of the President. Let us now consider the nature of the Constitution.

1. **A Written Constitution.** The Constitution is written in a brief document. This document, with all the subsequent twenty-one amendments, makes a reading of half an hour. All instruments of governmental machinery, their powers and functions, their relations to one another and to the states are specifically defined.

However, to-day, the Constitution does not exist merely in that document and twenty-one amendments. The Constitution has served as a starting point, a taking off ground. Its clauses have been re-interpreted and supplemented. New laws have been passed, new decisions have been pronounced. These fill hundreds of pages.

Again, new usages and precedents have arisen and new conventions have been established. For example. the Fathers of the constitution prescribed an indirect method for the election of the President of the U. S.A., but to-day he is elected directly by the people.

2. **Supremacy of the Constitution.** The Constitution is the supreme law of the land. Neither the National Government, nor the States can over-ride it. No law repugnant to the Constitution is valid. The federal constitution will prevail even if the state constitutions are contrary.

3. **Rigidity of the Constitution.** The constitution is very rigid. It is very difficult to amend it. The difficulty in its amendment may be seen in the process of amendment which is as follows ;

An amendment to the Constitution can be proposed in one of two ways :

1. The Congress may itself propose amendment to the Constitution provided two-thirds majority of both the houses voting separately, may deem it necessary.
2. Legislatures of two-thirds of the States may apply to the Congress, when the Congress shall call a Convention for proposing amendments.

The second stage is that of ratification. Ratification also can be effected by one of the two following methods :

1. The proposed amendment may be ratified by the legislatures of three-fourths of the states, or
2. It may be ratified by conventions called for the purpose in three-fourths of the states.

The Congress can propose whatever mode of ratification it deems fit.

After a proposed amendment is ratified by either of the above methods, it shall be valid to all intents and purposes as a part of the Constitution.

All this shows that the method of amendment is very difficult It may be pointed out that only twenty-one amendments have been made during the last 150 years.

4. **Judicial Review.** The Constitution makes the federal judiciary its guardian and protector. The courts interpret the constitution and find out whether a law of the States or of the Congress, or an action of the President, is *ultra vires* of the constitution. The Congress is under constant fear that its laws may be declared invalid. The Supreme Court has become a third chamber, a revisory body, in matters of legislation.

5. **Government of Limited Powers.** The National government has specified powers. The residuary powers belong to the States. The National government has the following powers under its jurisdiction : To borrow money on the national credit ; to regulate foreign and inter-state commerce ; to establish rules for naturalisation ; to coin money and regulate currency ; to protect copyrights ; to maintain army and navy ; to declare war and carry on relations with foreign nations ; regulation of weights and measures ; to admit new states in the federation. There are certain concurrent powers, which both the National and the State governments exercise. The rest belong to the States.

However, these are not the only powers exercised by the Congress. The doctrine of '*Implied powers*' has made for the growth of its powers and influence.

6. **Separation of Powers.** The American constitution manifests in practice the theory of separation of powers as advocated by Montesquieu. The three branches of government, *i. e.*, Legislative, Executive and Judiciary, are separated from each other. The President can not sit in the Congress ;

nor can his cabinet. He can not propose legislation as the English Prime Minister and his Cabinet can. The judiciary is made independant by ensuring them high salaries and permanent tenure during "good behavior." The Supreme Court comes into being along with the legislature and the executive under the provisions of the constitution. The Congress and particularly the lower house, can not interfere with the work of the chief executive as the House of Commons in England can.

But here also, the hopes of the Fathers have been frustrated. The needs of the times have led to homologate different branches of the government particularly the executive and the legislative. The rise of political parties has also helped a great deal towards this end. To-day the President is termed the "chief legislator."

7. **Checks and Balances.** The American constitution is one of checks and balances. It provides for checks and balances throughout. The Senate shares the power of appointment and treaty making with the President. The President appoints the judges of the Supreme Court. The organisation of federal judiciary is determined by the Congress. The President to-day shares powers of finance with the Congress. In fact, he prepares the budget. The judiciary reviews legislation and the acts of the executive.

We have seen that the constitution is not quite the same as it was proposed in the document. It exhibits many new features. But how these changes have come about? How the constitution has developed?

The constitution has developed through many factors the more important of which are: (1) Laws, (2) judicial interpretation, (3) usages and conventions, (4) amendments.

Laws. The constitution left many things to be accomplished by the Congress. For examples, the organization of judiciary was left to the Congress. It merely made provision for the establishment for the Supreme Court but its organization, term, and salaries of the judges were left to the discretion of the Congress. Again the election disputes are regulated by the Electoral Act of 1887. But the method of election and the suffrage, in the case of the Congress members are regulated by the states themselves. The committees are not mentioned in the constitution but their organization is regulated by the acts of the Congress.

Judicial Interpretation. The decisions of the Supreme Court have expanded the constitution very much. The implied powers of the Congress, the powers of removal and pardon of the President owe their origin to the Supreme Court. The Supreme Court has given wide meanings to the words used in the constitution. For example, the constitution merely mentions that the 'excises' and 'taxes' are under the jurisdiction of the Congress, but it does not specify the contents of 'excise' and 'taxes.' It is the Supreme Court

which determines as to what they constitute. Theeffect of this wide interpretation of the constitution has been to strengthen the Federation in opposition to the States.

Usages and Conventions. New usages, conventions and precedents have developed and helped to expand the constitution. The constitution provides for the indirect election of the President, but to-day he is directly elected by the people. Again "Senatorial courtesy" is merely a usage.

Political parties have been another and very important factor in the development of the American constitution. It is mostly through party machinery that harmonious working between the President and the Congress has been possible.

Amendments. There have been twenty amendments to the constitution so far. Out of these ten amendments were added on December 15, 1791. They were, in fact, already agreed upon. The Eleventh and Twelfth amendments remedied certain ambiguities in the constitution. The most important amendment was the Thirteenth passed in December, 1885 This amendment abolished slavery. The Fifteenth amendment established equal rights of white and coloured citizens. The Eighteenth amendment prohibited alcoholic liquors. The Nineteenth amendment in 1920 established woman suffrage. The Twentieth amendment advanced the date of the President's and Vice-President's inauguration and abolished lame-duck session of the Congress. The Twenty-first amendment repealed the Eighteenth amendment.

The result of this development has been that the constitution, framed nearly 150 years before, has been adopted to the new conditions of the twentieth century and is working successfully.

QUESTIONS AND TOPICS

1. Describe the chief features of the constitution of the United States.
2. How has the constitution of the U. S. A., developed ?
3. Describe the method of amendment of the American constitution.

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CHAPTER 24.

THE PRESIDENT.

The Fathers of the American constitution had a thorny problem of providing the federal government with an executive. After a discussion of twenty-one days in the convention, they decided in favour of a single, rather than a " plural executive." Hence, the constitution lays down that " the Executive power shall be vested in a President of the United States." A single executive has advantages of prompt action and concentration of responsibility which were very much needed in the scheme of the governmental machinery provided for the U. S. A. A Vice-President is also provided for under the provisions of the constitution.

After setting up the Presidency, the next problem was: what are to be the qualifications of the Presidency? How is he to be selected? What would be his salary and allowances? For how long he is to continue in office and whether he should be eligible for re-election?

Qualifications. The constitution requires three qualifications for the President and the Vice-President:

1. He must be a natural born citizen of the U. S. A.
2. He must be at least 35 years of age.
3. He must have been a resident of the U. S. A. for at least 14 years.

These qualifications may be termed as constitutional qualifications.

In addition to these, a candidate for Presidentship must have some other qualifications also. These may be termed as Political qualifications. They are:

1. **Oratory.** He must be a good orator. In his election campaign. he must be able to appeal to the electorate and rope in the largest number of votes. While in office, he has to influence the legislature and assume the leadership of the nation through radio and platform.

2. He must not be anti-religious. Because he has to secure Catholic votes.

3. **Sound at Tariffs.** Political parties are very much influenced by big businessmen, as they contribute huge sums of money to party funds. No candidate with violent measures for currency reform or vital measures for change in tariffs system, would be acceptable to them. He must not have such measures which may disturb the normal course of business.

4. He must not be an extremist.

5. Administrative experience is a great advantage for a presidential candidate. He must have proved himself a good

administrator, a successful governor, or a successful bank manager. or a successful diplomat, or a good official in the national administration.

Many Presidents were officials before their election to the presidency. For example, Wilson was Governor of a State before he became President. Hoover was Secretary of Commerce for 7½ years. Franklin Roosevelt served as Assistant Secretary of the Navy during the war, 1913—20. He was Governor of New York from 1929 to 1933.

6. **Obscurity.** He must not be too well-known, so that he may not be ridiculed in the election campaign. President Lincoln was little known before his election, Governor Fuller could not be President because 'Sacco and Vanzetti', whom he had executed during his Governorship, would have become the 'issues' of the election campaign.

Why great men are not elected. This quality of obscurity was the reason which led Lord Bryce to remark that great men are not elected to the Presidency of the U. S. A. An intelligent person would be well-known and hence would not make a good candidate. Able and prominent men make more enemies, only mediocres can be popular. The most important factor in Bryce's view is that America affords a great field apart from politics for the utilisation of the talent of the country. Commerce, trade, and industry draw more intelligent and enterprising men than politics or government does. Party system is another hindrance. There is so much bargaining and bidding, compromise and give and take, that no intelligent person of strong convictions can stand for the Presidency. The result of this is that 'dark horses' are elected to be driven to the White House.

However, we can not say that America does not have able and intelligent Presidents. The case is, in fact, the reverse. America has had first-rate Presidents like Lincoln, Jefferson, Jackson, Theodore Roosevelt, Wilson, Hoover, F. Roosevelt, etc. etc. Admitted, that there have been "Buchanan Presidents" whom no country could tolerate in such a high office, or other weak Presidents like Harding and Coolidge. But this is not peculiar to America alone. England also has seen weak Prime Ministers like Sir Henry Campbell-Bannerman 1905, Lord Balfour 1912 Mr. Bonar Law in 1922 and Mr. Asquith in 1916. America, on the other hand, has not failed to produce strong presidents when their need was felt—Lincoln in Civil War, Wilson in Great War, F. D. Roosevelt in economic depression. Weak Presidents have often succeeded by strong Presidents and that is natural. 'Normalcy' is always certain to be popular after a crisis.

To-day, if there is any truth in the view that great men are not elected to the Presidency, it is not so much due to the causes mentioned above as to "availability." This term means that the candidate must be able to make the widest appeal, and offend the least proportion of the electorate. Henry Clay, Governor Fuller, and Mr. Hoover in 1936, could not be nomin-

ated for Presidentship because they could not satisfy the test of 'availability.'

Election : Old Method. The United States government was created as a safeguard against democracy. The Fathers had in view the protection of the rights of " Property ", and consequently, wished to keep it away from falling into the hands of the mass of the people. Therefore they decided upon an indirect method of election for the chief executive

The constitution provides that the President will be elected by an electoral college consisting of 531 members – each State having as many members on it as they had Senators and Representatives in the Congress. Members of this college are to be lected in the manner which the legislatures of different States prescribed for their respective States. Hence, there is no uniformity in the method of election of the electoral college.

After their election, these electors will meet and vote for any two persons, one of whom must belong to a State other than their own. The person, who gets an absolute majority of votes is declared President. If there is a tie among two or more persons the House of Representatives will decide by voting. In this case the representatives of each State have one vote only. If none gets a majority, and there is no tie, the House will elect one person from amongst those five who get the highest number of votes in the electoral college. After the choice of the President, the person securing the largest number of electoral votes must be declared Vice-President. In case of a tie, the Senate should decide.

New method. However, institutions are living forces and are dynamic—changing with times and men. The hopes of the Fathers of the constitution have been frustrated. The method of election proposed by the Fathers in the constitution could not work well and an amendment had to be made in the constitution, recommending separate voting for the President and the Vice-President. With the rise of political parties, ths situation became more complicated. The form of the method proposed in the constitution is observed but the spirit is wholly. changed. New conventions have come to be established. The method of election of the President has come to be direct to-day, and has led to vital changes in the whole American governmental system. Had the Fathers been alive, they would have been shocked. The present method may be divided into four stages :

(*i*) Nomination of the Ptesident.
(*ii*) Nomination and election of the electoral college.
(*iii*) Election of the President by the electoral.
(*iv*) Result.

(*i*) Nomination of the President. Five or six months before the date on which the election of the President falls due, political parties—democratic and republican—hold their conventions in big cities like Chicago, St. Louis and Baltimore. These party conventions consist of delegates from different

States. After a formal process which takes three or four days, the convention elects the permanent President. A roll call is taken of the States alphabetically. Now, any delegate can propose a candidate for the Presidency. There are sometimes 15 to 20 candidates. They are recorded, defended and applauded. After candidates have been proposed, a roll call of the States is again taken, the delegates present announce their votes. Here, the procedure followed in the two conventions—Democratic and Republican—is different. In the Republican convention the delegates vote individually. In the Democratic convention, the delegates from each State vote *en bloc*. The result is decided by bare majority in the Republican and by two-thirds majority in the Democratic convention. But what is to be done if none gets the required quota ? The roll call is repeated and voting is again taken. This process continues until a final result is achieved. which sometimes necessitates numerous ballots.For example, Woodrow Wilson was nominated on the 46th in ballots 1912 and Cox on the 44th in 1920, and John W. Davis was nominated on the 103rd ballot in 1924. During this process a great deal of bargaining goes on; promises are made ; votes "whipped."

In fact, decision is taken by the high-lights of the party sitting in some hotel, outside the convention. Sometimes a 'dark horse' candidate, like Harding, might emerge out of such deliberations. To be successful, much spade work before the meeting of the convention is very necessary. Mr. Farley was busy with such spade work for two years before the nomination of President Roosevelt in 1932.

After the election of the nominee for Presidentship, the convention elects a Vice-Presidentship in the same way, but this does not necessitate such contest.

After selection. the presidential election campaign begins. It is the most important feature in the United States politics. Platform and press, radio and movie aeroplane and railway—all available devices are used by the parties concerned.

(*ii*) **Electoral College.** The second stage in the presidential election is the election of the electoral College. The parties, in each State, choose a 'Slate' of Presidential electors. They are put before the voters who elect or reject them *en bloc* and not individually. Thus the election of the President has come to be direct. The people know the Presidential candidates and vote for that block, which supports the Presidential candidate whom the voters like.

(*iii*) **Election of the President.** These electors meet in their respective States on the first Monday after the second Wednesday of December, and vote by ballot separately for the President and the Vice-President. The lists of candidates voted for for either office with the number of votes they have received are sealed and sent to the president of the Senate. On the 6th January, the members of both the houses meet in the House of Representatives with the Vice-President in the chair. The votes are counted and the result announced.

The person getting 266 votes out of 531 is declared to have been elected the President.

If no candidate gets this majority, the election is decided in the House of Representatives. The House elects one from amongst the three candidates, who have secured the highest number of votes –representatives from each State have only one vote. These representatives decide among themselves by a majority decision as to how the vote is to be exercised. A majority of all the States is necessary to elect. Since 1801 this power has been exercised only once, when in 1825, John Quincy Adams was elected in this manner. In case of the Vice-President if none gets a bare majority. the Senate—members voting as individual—elect from amongst the first two candidates. A majority of votes is necessary for being elected.

Except in cases of a tie or when none gets a majority, this counting is only formal. The country knows weeks before who is going to win. As a result of this system, a president chosen should secure majority of electors, but may not secure the majority of popular votes cast at polls. Hayes and Cleaveland were elected with majority of electors but with majority of popular votes. Those who are elected in such a manner are known as ' Minority ' Presidents.

After the election, the President takes an oath of office.

Term and Re-eligibility. The President is elected for four years. He cannot be removed from office before the expiry of this term, except, in case of death or madness or impeachment. He is eligible for re-election. Nearly all important Presidents have been elected twice. In fact, not to re-elect a President is to condemn his administration. Harding and Coolidge were not re-elected because they proved weak, feeble and incapable. Mr. Hoover could not be re-elected because he proved himself incapable of handling the crisis of 1929–31. However, there is a great prejudice against a third term. Many Presidents, like Washington, Jefferson, and Jackson, did not accept a third nomination. Others, who tried to stand for a third term, could not succeed, General Grant in 1880, Theodore Roosevelt in 1912 and Taft tried to stand, but were unsuccessful. The fear is that a third term may make the president a dictator No executive except dictator reigns for 12 years. But this time Mr. E. Roosevelt broke this long established convention, and was re-elected for a third term in 1940. This may be ascribed to the emergency of war. Whether this practice will come to be permanently established can not be said at the present time.

Salary and Allowances. The President receives an annual salary of 15,000 dollars In. addition to this, he receives allowances for vehicles, furniture, repairs, clerk-hire, and travel, amounting to 350,000 dollars. The Vice-President receives 15,000 dollars as salary with 100,000 dollars as other allowances etc.[1]

1 Ogg and Ray. Introduction to American Government, p. 263.

The President and the Cabinet. Though the President is the chief executive actual work of administration is carried on by the heads of departments. These heads form a body, known as the "cabinet," around the President to advise him when be seeks their advice. The word 'cabinet' is an extra-legal growth in the United States as it is in England It is not to be found in the constitution, though it is mentioned in a statute law. These heads of departments, or the members of the cabinet are appointed by the President himself in concurrence with the Senate. The Senate more often than not agrees to the nominees of the President.

The President while selecting them has to keep certain considerations in view. He should select those who have influence with the Congress as Webster and Clay ; others who are expert in handling party machine as Mr. Farley ; some must represent different sets of electorates as Catholics and women etc. He has to see that all geographical units of the country are represented in his cabinet ; and that he has rewarded all those whom he had promised before his election Apart from these political considerations, his personal choice also plays an important part. For example, in the present cabinet Miss Perkins and Mr. Iakes are President's personal choice.

Relation between the two. The United States cabinet is quite different from the British cabinet. There it is a governing body, an object of ambition for politicians. It is a committee of the House of Commons, which initiates and controls all legislation and other activities of the house. The Crown has also to accept its decisions.

The United States cabinet, on the other hand, is the creature of the President and it is there because the President wishes so. It is merely an advisory body. Its meetings are formal. Only those objects are discussed which the President brings before it or those which have received his previous consent. He may consult them on great issues or may not. Even if he consults, he may accept their view or may reject it. Once President Lincoln brought a question to be discussed before his cabinet of seven. The cabinet opposed it. Votes were taken which showed that there were seven nays and only one aye (the President himself). Announcing the result the President said, "The vote is 7 nays, 1 aye—the ayes have it." The decisions reached in the cabinet are mere recommendations to the President.

The responsibility is exclusively his. "The technique of cabinet functioning is not a pooling of the minds as in the Britain or French sense.....It is that the cabinet discussion is the collection of opinions by the President with a view to clarifying his own mind, rather than search for a collective decision"[1] The principle of collective responsibility is absent in the American cabinet.

1. Laski, H. J. American Presidency. p. 92.

Generalisation and formulation of policy is the business of the President. The cabinet members may be consulted about their own departments. Their speeches, except those of persons like Hull, are concerned with their own departments. Even departmental policy is laid down by the President. The cabinet possesses no legislative powers, as the British or French cabinet does. Its members are not the members of the Congress. They do not initiate or formulate or control legislation But they can appear before committees appointed by the Congress. The cabinet cannot compete with or force the President. They can not appeal to outside public opinion because they have no such public opinion to appeal to, as the President has. The President is a news, while a cabinet member's utterance is a surprise.

The membership of the cabinet is surely not an object of ambition or a ladder to presidentship as in France. The members of the cabinet emerge out of oblivion and bury themselves in obscurity after the expiry of their term.

Thus the American cabinet, lacking all the necessary ingredients of a real cabinet – membership of legislature, initiation of legislation, formulation of policy, and collective responsibility to the legislature,—is merely a board of Secretaries of State, without any responsible political power. They are at the mercy of the President.

The powers of the President of the U. S. A., are immense; he is the head of the government. He exercises both executive and legislative powers. The constitution vested the President with "executive powers" only; but with the lapse of time, new powers have grown around him and to-day he possesses such vast powers that, besides being the 'chief executive', he may be called the 'chief legislator' as well. How these powers have come into existence? What are their sources?

Sources of the Powers of the President. There are four sources of the powers of the President.

1. **Constitution.** The constitution specifically confers certain powers on the President *i. e.*, appointment of officers —military and civil (with the consent of the Senate); carrying on negotiations and concluding treaties (latter, with the concurrence of the Senate); to "preserve, protect, and defend the constitution"; veto power etc. etc. These powers can neither be increased nor decreased by the Congress.

2. **Supreme Court.** Many powers arise from the interpretation and implication of these constitutional powers by the Supreme Court. The latter has been generally generous and favourable towards the President The source of the power of pardon is to be found here. When the constitution is silent, the Supreme Court has to be depended upon. The constitution does not confer the power of removal of officials on any part of the American government. The Supreme Court held that it belongs to the President.

3. **Statutes.** The majorityof the powers of the President arise from the acts of the Congress, assigning certain powers and responsibility to the President directly or by implication. In 1933, the Congress 'Farm Relief Bill' conferred on the President powers (1) to issue up to $3 billion, in unconvertible Treasury Notes ; (2) to reduce the gold content of the dollar not more than 50% ; (3) to have the Federal Reserve Board purchase not more than three billion dollars of additional Government securities[1].

In 1935, the Congress created a new department, National Recovery Administration, which gave powers of appointment and removal to the President. The President was given the power to license industry.

The tariff laws passed by the Congress, confer powers on the President to ignore the tariff commissions and conclude international reciprocity treaties on tariffs.

The Lease and Lend Bill, 1941, empowers the President to help the allies with armaments.

4. **Emergency.** Emergencies like the war of 1914—18, or economic crises like that of 1929–31, or the present war make the President a virtual dictator. The powers exercised by the President on such occasions are very great. Presidents Lincoln, Wilson and Roosevelt (particularly in the first 100 days), exercised dictatorial powers.

5. **Usage.** Most of the powers, exercised during emergency periods, remain with the President and by convention, they become a part of his usual functions. Certain other practices for the convenient working of the governmental machinery arise and become a part of the constitution. The constitution requires that the President must consult the Senate over appointments. But the convention has been established that he need consult only that Senator, in whose district the appointment is to be made.

The Powers of the President. The powers of the President may be studied under the following heads :

(*i*) **Executive Powers.**

(*ii*) Powers in relation to Foreign Affairs and Defence.

(*iii*) Legislative.

I. **Executive Powers.** The executive powers of the President include :

(*a*) **Execution of Laws.** The first duty of the President is *to execute* all laws. The constitution requires of him to 'see that the laws are faithfully executed.' He is required to 'defend and protect' the constitution, the laws of the Congress, treaties, and all federal agencies and property. He performs this function through administrative and executive machinery. If he thinks fit, he may use the military, navy, air force, or national militia, in the performance of this function.

1. Frank. Darrak. The American Political Scene. p. 183.

This implies another function which is the maintenance of domestic order. He is not concerned much directly, unless any such disorder interferes with the execution of federal laws in which case he can act directly and independently. Otherwise, he need act only at the request of the State concerned.

(*b*) **To make Appointment and Removals.** With the exception of the members of the Congress, the President and the Vice-President, all the officials serving under the federal government, are appointed by the President. This power is a great source of patronage in the hands of the President. No other executive head, except dictators, possess greater control over the filling of offices—both military and civil than the American President.

However, the constitution provides certain checks over the exercise of this power, so that the President may not abuse it. Firstly, all higher appointments are made 'by and with the advice and consent of the Senate.' Generally, this consent is given by the Senate But sometimes in the case of the appointment of cabinet members, the senate has with held its assent. The recommendation of Gallatin for the post of Secretary of State by President Madison, and that of Charles B. Warren for the post of Attorney-General by President Coolidge were rejected by the Senate.

In the case of judges or ambassadors, the nominations have been similarly rejected. Gallatin was rejected for ambassadorship to Russia, Norman Hapgood for Denmak, and Van Buran for London. Between 1789 and 1938, the Senate rejected 21 nominations for judgeships of the Supreme Court out of a total of 109 presented to it—20 per cent.

In the case of other appointments such rejections are very frequent. A rule has been established that if the Senator, in whose district the appointment has to be made, is satisfied with the person recommended bv the President, the approval by the Senate is given. This practice is known as the "Senatorial Courtesy."

Secondly. Most of the inferior appointments are made by the Courts of Law or by the heads of departments in their respective departments. Out of a total of 661,094 officers and employees of the federal government, the President appoints with the Senate's concurrence merely 18,000.

The power of removal belongs exclusively to the President except, when removed by impeachment, as he alone is responsible for the administration. He can not abuse this power because he has to look to the Senate for the appointment of a successor. The Senate has no authority either in confirming a removal or compelling one.

(*c*) **Issuing of Ordinances and Executive Orders.** Execution of all laws and treaties implies the power of direction of administration. Though ultimate control is vested in the Congress, immediate control and direction is exercised by the

President. This is facilitated by the power of removal in the hands of the President.

This direction is exercised through ordinances and executive orders, issued and promulgated by the President. Secondly, neither the constitution nor the Congress can touch the details. These are to be provided by the President. The details of organisation, the forms of procedure, and in general, the *minutiae* of administration, are of necessity left to be prescribed by supplementary rules and regulations[1] All administrative law is the creation of the President or the departments under him. The National Recovery Act, Economy Act, Emergency Farm Loan Act, gave enormous administrative powers to the President.

(*d*) **Prerogative of Mercy.** This may take any of the three forms – Pardon, Reprieve and Amnesty. Pardon can be given by the President, even before the trial, in all cases except when the accused is impeached or when the offence is committed against some agency other than the federal government: Reprieve means only a postponement of the execution of sentence. Amnesty is a modified form of pardon. It is given to those who, without having been individually convicted, are known to have violated federal law.[2]

II. Foreign Affairs and Defence.

Foreign Affairs. The President is the director of foreign relations. He is the sole authority who (with the concurrence of the Senate) carries on all international relations of the United States with other nations. There is a Secretary of State for Foreign Affairs, but the President's relation to him is that of the Prime Minister to the Foreign Secretary in England. The Secretary of State for Foreign Affairs must agree with the President, or he must go. Though routine and file work is done by the foreign department, the formulation and execution of policy is the President's function. His powers in this field are as follows : –

(*a*) He appoints all ambassadors or ministers or agents to foreign countries, with the consent of the Senate.

(*b*) He receives all ambassadors, ministers or agents of foreign nations accredited to the U. S. A. It is his right alone.

(*c*) He can send special agents abroad. President Wilson sent Colonel House during the last war and President Roosevelt sent Sumner Welles ro Europe in 1940.

(*d*) Recognition of new foreign states is solely his right. In 1903, President Roosevelt recognised Panama as an independent State and in 1933 Franklin Roosevelt accorded American recognition to the Soviet Government.

(*e*) He has to protect American nationals abroad and foreigners within the American territorial jurisdiction.

1. Ogg and Ray. Introduction to American Government, p. 263
2. Ibid, p. 65.

(*f*) He is the sole official medium of intercourse between the United States and foreign countries He enters into negotiations with other countries and makes treaties. But such treaties entered into by the President are to be ratified by the Senate with two-thirds majority. The Senate has no direct sharing of power during the negotiations. It is presented with final shape of the treaty and before that it can not make its wishes known.

(*g*) He can enter into "executive agreements", having not less validity than treaties, without participation of the Senate. Here the powers of the President are vast and undefined. In 1905, President Roosevelt entered into a compact with Santo Domingo and this continued until 1907, when a treaty was concluded on the same lines. In 1911, President Taft concluded a similar compact with Nicaragua. The limitation on this power is, firstly, that the President will have to go to the Congress for money appropriations required in the execution of such agreements, and secondly, he cannot go against the wishes of the Congress and the country.

(*h*) **Formulation and shaping of Foreign Policy.** To ask what the United States is going to do is to ask what the President is going to do. The history of the Presidency shows that nearly all Presidents have held good hold over the foreign policy of the United States. There may be certain exceptions like Harding and Coolidge, but this was due to their general incapacity. Otherwise, American Presidents have well performed this function. President Washington proclaimed neutrality in 1793 ; Monroe gave Monroe doctrine ' (1823), to America ; McKinley gave the principle of ' open door ' in China (1899). Presidents Wilson and Franklin Roosevelt are striking examples of having a complete control over foreign policyof the country.

Defence. The President is responsible for the defence of the U. S. A.. and for this purpose has the following powers :

1. The President is the Commander-in-Chief of military and naval forces.
2. He can make by-laws and regulations supplementing the Acts, of the Congress concerning defence.
3. He can send both land and naval forces anywhere he chooses, even outside the country.
4 He can take command in the field, if he so chooses.
5. He can establish military government in conquered territories.
6. He can carry on the war, short of declaring it, as it can be declared by the Congress alone. But he can produce such conditions that the Congress may have no alternative but to declare war.

In this sphere, the powers of the President are limited by three factors :

1. The concurrence of the Congress for declaring war is necessary.

2. Money is to be appropriated by the Congress.
3. The Congress may pass some prohibitive legislation, otherwise, he has a free hand in this sphere also.

The P esident and the S:nate. In the exercise of his executive functions and in the field of foreign affairs and defence, the President has vast powers unhindered and unlimited by any other organ of the American government. The Congress does not share any power with him in this sphere, except, in the matter of declaring war. If there is any limit to the authority of the President, it comes from the Senate. The American constitution is based on the conception of weak government and hence the fathers provided many checks and balances throughout the governmental machinery. Lest the President abuse his power the Senate is to share some power with him. In case of appointments, the consent of the State is required. Though the consent is generally given in case of cabinet appointments, the Senate often refuses approval as we have seen while discussing President's power of appointment. A bad system of "Senatorial courtesy" has come to be established. The worst is when any Senator may manoeuvre to defeat or reject any appointment on the ground that the appointed is personally 'obnoxious' to him. There have been some proposals to end this state of affairs It has been suggested that there should be a permanent civil service. But it will take away from the hands of the President a weapon of patronage, which has helped him in standing against and overshadowing the Congress Again, there will be a bureaucratic and unimaginative Civil Service. The Civil Service under Mr. Roosovelt is considered most efficient. Another suggestion is to take away the power of the concurrence from the Senate. But it would make the President a dictator and would leave much room for abuse. What is required is that the 'Senatorial courtesy' should be done away with. It must go.

Secondly The President concludes treaties, the Senate ratifies them. Two-thirds majority of the senators is required for the ratification of treaties. In case of appointments of ambassadors and ministers, the concurrence of the Senate is required. Except these, the Senate has no power. It is the President, who initiates, formulates and executes foreign policy All negotiations are carried on by the President himself and the Senate has no occasion to make its wishes felt. It can accept, reject or amend a treaty, presented to it in its final shape. The Senate has performed this function efficiently. Till 1824, no treaty was rejected outright; the total number of treaties failing to receive approval throughout the entire history of the United States (till 1940 is only sixty-two; and while the Senate insisted on amendments or reservations to one hundred and fifty-two treaties (up to 1935), it unconditionally approved more than four-fifths of the entire number presented to it.[1] In a recent period of less than six

1. Ogg and Ray. Introduction to American Government p. 577.

years the Senate assented to the ratification of one hundred and sixty treaties with forty-one different nations. On a day in June, 1934, it approved twelve in a singls hour[1]. Thus the Senate has not abused its power. But the rejection of the Peace Treaty of Versailles is an amazing and horrifying example. However, such examples are rare. The President can even evade the necessity of concurrence of the Senate by entering into "executive agreements." In 1905, President Roosevelt made such a compact with Santo Domingo on the rejection of a treaty by the Senate, and these arrangements continued till 1907 when a new treaty was concluded. He can appoint special plenipotentiaries and embassies without the concurrence of the Senate.

There have been proposals that this power of the Senate should be taken away altogether and the President should be given a free hand. The Senate has done its part well as seen above. The "Foreign Affairs Committee" of the Senate is very important and contributes a great deal by discussing and criticising the policies followed by the President. No purpose would be served by removing this control over the President Objection is also taken to the requirement of two-thirds majority of the Senate for the ratification of treaties. It is contended that it gives a veto to the minority over the majority. But the working of this principle shows that this has never been a check on the action of the Senate. None of the treaties presented to the Senate for approval failed because of two-thirds majority before 1860, and only twelve failed between that date and 1935, and out of these twelve, not more than two were of serious importance.

Laski's view point[2] is that the lower house should also be given a share in peace-making power as in war-declaring ; if may well be recommended. He would prefer bare majority in both the houses. It will homologate the peace-making control of foreign policy with that involved in the making of war. The appropriation for execution of treaty obligations are to be made by the lower house and it is in the fitness of things that it should be given a share in the ratification of treaties, of which it will have to bear the burden. The lower house, being elected frequently, will be reflecting latest public opinion[3].

III. **Legislative Powers.** The constitution invested the President with executive powers. All legislative powers were conferred on the Congress. The President is not a member of the Congress, nor are his cabinet members. The President does not possess all the weapons to influence the Congress, which a Prime Minister possesses to influence the British parliament. He can not threaten the Congress with dissolution ; nor is he the leader of the majority party in the House. The members of his party may even vote against him. He does not have influence over the time and procedure of the

1. D. F. Fieming. "The Role of the Senate in Treaty-Making". American Political Science Review. (Aug. 1934).

2. Laski. The American Presidency, p. 206.

Congress. The Congress institutes committees to investigate his administration, but he can not determine their composition as the English Prime Minister can.

The Congress is a real law-making body. There is much of independent legislation. The President has to execute all legislation even if it is against his wishes. He may initiate and recommend legislation, but he can not control it in the legislature. It may emerge out in quite a different form. The Congress might even pass legislation hostile to the one recommended by the President. The congress in 1939, decided to discontinue the cultural experiment made under the "Works Progress Administration," on grounds of economy, even when the President and the administration were quite opposed to this action of the Congress. "The President can persuade and cajole but can rarely threaten."

This relation between the President and the Congress leads to incoherency and irresponsibility in legislation and legislation becomes the creation of many interests and groups. There is no uniformity. These influences, which go to make legislation, are so diverse that it is difficult to blame any one. This is a temptation for weak Presidents like Buchanan, Harding and Colidge to evade responsibility. The Congress, being controlled by none, may be led away by a furious propaganda as happened in 1938. It disapproved the "Reorganisation Bill" in that year and passed it without any changes in 1939. The result is compromise. There may be union but never unity. The power of the President to carry on a positive policy is very limited. "The position of the President may be more splendid than powerful, involve responsibilities without sufficient powers to meet them, and be an obstacle to the nationalizing of politics which is so imperative a need of the American system."[1]

The position, however, is not so desperate as it seems. Many devices have been found out which have made for coherency between these two organs of the American government. Today, the President makes so much legislation that he may be termed as the "Chief Legislator." There are five ways in which he exercises his legislative powers."

(*i*) **Special Sessions.** He has a right to call a special session of the Congress. If the Congress disagrees with the President to consider certain measures in its ordinary session, it knows that the President can call a special session. President Wilson in 1913, Harding in 1921 and Hoover in 1931 called special sessions. All important legislation in 1913 was passed in this special session.

(*ii*) **Messages.** The President delivers at the opening of each session a speech, summarising the conditions prevalent and the matters requiring immediate consideration and suggesting lines of policy on which the Congress may handle those problems. He may transmit such messages during the session also

1. Brogan. The American Political System. (1933).

if he considers it necessary. This can be done either personally as Wilson did, or through radio as Coolidge did or through writing as Jefferson did. F D. Roosevelt employs the first two methods This is a great power in the hands of the President. It may be pointed out in this connection that one of the most important planks—Monroe Doctrine—in the foreign policy of United States was propounded in a message to the Congress by President Monroe.

(*iii*) **Recommending Legislative Measures to the Congress.** Real legislative initiative belongs to the President in that the constitution provides that the President may recommend to the Congress " such measures as he shall judge necessary and expedient." This recommendation may take any form. It may be a drafted Bill or merely broad principles laid down in a message. This legislation is not introduced by the President directly, but by some friend of his or a member of his party, who is a member of the Congress.

(*iv*) **Guidance in Finance.** The annual budget is prepared under the guidance of the President. This has made him " the general business manager of the Government."[1] The Congress has a right of amending or rejecting the demands in the budget, but it does not touch them usually because of the niceties of a budget, which only the experts can understand.

(*v*) **Veto Power.** Every bill or resolution passed by both the houses of Congress requires President's assent before becoming law. When a Bill or resolution is presented to the President four courses are open to him :

(*a*) He may sign the bill, and it becomes a law.

(*b*) He may hold it without either signing or vetoing it, in which case it becomes law at the expiration of ten days, without his signature, provided the Congress is still in session.

(*c*) He may keep the measure on his desk and by so doing kill it if the Congress adjourns within ten days. This is known as " Pocket Veto." This is the most important of all the modes of exercising veto. The Congress can not criticise or argue against the presidential action.

(*d*) He may veto a bill or a resolution outright and return it with his arguments for disapproval to the house, in which the bill or the resolution had originated. It is discussed there and if it is passed in both the houses of the Congress by a two-thirds majority vote separately in each house, it becomes law notwithstanding the veto of the President.

This veto power of the President is merely suspensory and not absolute. The President can not veto or assent to certain items of the bill presented but veto or assent to the bill *in toto*. Nor does this power extend to constitutional amendments. However, this power has been frequently used Grant vetoed 43 measures, Theodore Roosevelt 40, Wilson 26 and Cleveland 354. The result is that the veto of the President has

1. Ogg and Ray. Introduction to American Government.

become a revisory power. Today it is very important—particularly the Pocket Veto. Even in the case of a direct veto, the Congress has over-ridden a few measures only. It is very difficult to get two-thirds majority separately in both the houses. In the case of Grant only four ; in that of Cleveland, Taft and Wilson two each, in Hardingis none. in Coolidge's four and in Hoover's three measures out of total vetoed bills received two-thirds majority in the Congress. This means that the direct veto is as absolute as the ' Pocket veto.'

These are not all the methods which the President employs in the exercise of his legislative powers. He uses other methods which help him indirectly. Some of these methods are :—

1. **Threat of Veto.** This means exercising of veto power in advance. When a bill is in progress in the Congress, the President may declare that he would veto the bill, if passed. Sometimes it is effective ; at other times the Congress might insist on passing a measure in retaliation to the President's threat.

Use of Patronage. This is a very effective method as well as power, in the hands of the President to exercise his influence on legislation as well as on the Congress. The President has extensive patronage in his hands to distribute. The peak of his authority is reached, normally, in his first term. No member of the Congress would like to keep his constituency ' starved.' To refuse the federal patronage is often enough to loose his seat. What influence this power exercises in manipulating the congressional opposition is clear from the passage of the Silver Purchase Act in 1893. Senator Voorhees was totally against the measure, but he voted for it, because otherwise he would loose all the patronage he had received from the President. If he had voted against the measure. all the loaves and fishes enoyed by his supporters and friends would have been lost.

3. **Personal Conferences.** Though the President cannot attend the Congress, he can have personal conferences and casual meetings with the party leaders in the Congress He can discuss measures with them in these personal conferences and secure their support in advance.

4. **Appointment of fact-finding commissions.** The President may appoint commissions to collect data and recommend legislation or other improvements. These commissions are appointed directly by the President ; they are instructed by him : and they present their reports to the President. The Congress also appoints such committees but the reports of the commissions are more authoritative and instructive than those of the committees of amateur Congressmen.

5. **Appeal to public opinion.** He can appeal to the nation against the Congress. There is an inherent respect in his office. The nation listens to him, watches his actions with attention. When the President has spoken, the nation has spoken. Hence, he wields much power against the Congress. The latter is a big body having no coherence. It cannot appeal to the

nation. In this sphere, the power of the President is not very effective and far reaching. It is the real cause of his leadership and pre-eminence over the Congress. If all else fails, the President may hope to succeed by appealing to the people and putting the Congress in such a position where it dare not oppose the President. Theodore Roosevelt, Wilson and Franklin Roosevelt have used this power quite frequently, and effectively.

This does not mean that the President has an entirely free hand, uncontrolled by any one, in matters of legislation. The Congress can exercise a great deal of control and direction over the President in one of the following ways :

1. The Congress may refuse to pass measures recommended by the President.
2. It may pass legislation hostile to the wishes of the President.
3. In the case of a conflict with the Congress, the President may have to modify his original views.
4. The Senate may refuse to ratify treaties and to assent to appointments.
5. The Congress may institute an investigating committee for investigating executive and administrative work for which the President is responsible.
6. The House of Representatives may impeach the President before the Senate.

Conclusion The history of the President's office is a remarkable record. Though the office was based on the conception of a weak government, it has not failed to give America strong Presidents like Lincoln, Jefferson, Jackson, Taft, Theodore Roosevelt. Wilson, and Franklin D. Roosevelt. The President provides leadership to the United States. He is the real head of the government and the ceremonial head of the state. His executive and legislative powers are enormous and vast. He is the sole authority in foreign affairs and defence matters. He is the mouthpiece of the nation. The nation looks to him for guidance He is the leader of his party. The patronage in his hands keeps the wheels of the party machine oiled.

The Presidential office has commanded authority and respect according to the ability and intelligence of its occupant. This is borne out by many occupants of the office. For example, "the executive powers," wrote Theodore Roosevelt, " were limited only by the specific institutions and prohibitions in the constitution, or imposed by Congress under its constitutional powers.....I did not usurp power but I did greatly broaden the use of the executive powers." Wilson was again a very strong President. "The President is at liberty," wrote he, "both in law and in conscience to be as big a man as he can. He capacity will set the limit." He is entitled to seek the leadership of the nation because " President has the nation behind him and the Congress has not." Wilson further wrote, " The President is expected by the nation to be the leader of his party, as well as the chief executive officet

of the government; the country would take no excuse from him. He must play the part and play it successfully or lose the country's confidence. He must be prime minister as much concerned with the guidance of legislation as with the just and orderly execution of law, and he is the spokesman of the nation in every thing, even the most momentous and delicate dealings of the government in foreign affairs." The succeeding Presidents *i. e.*, Harding and Coolidge, were weak and exercised self-abnegation of power. Hoover also did not prove strong. Franklin D. Roosevelt holds the same views as Wilson and has proved a very strong President.

QUESTIONS AND TOPICS.

1. Describe the powers of the President. What position has he come to occupy in the governmental machinery of the United States?

2. What is the relation between the President and his cabinet? Compare the American cabinet system with that of England. Which of the two you prefer?

3. Compare and contrast the powers and position of the President of the U. S. A. with those of the Prime Minister of England and the President of the French Republic.

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CHAPTER 25.

THE CONGRESS

The legislative organ of the United States Government is known as the Congress. It consists of two houses—the House of Representatives and the Senate.

House of Representatives. It is the lower house of the Congress, representing the general body of citizens of the United States, It consists of 435 members and is elected by the people of the United States directly after every two years on the basis of universal adult suffrage.

Qualifications. A candidate for the House of Representatives must have the following qualifications :

1. He must be twentyf-ive years of age,
2. He must have been a resident of the United States for at least seven years.
3. He must satisfy legal qualifications of residence for voting purposes of the State in which he is chosen.
4. He must be a resident of the districts which he represents.

Disqualifcations. The following are the disqualifications for the membership of the house :—

1. No person holding any office under the United States can be a member of the House during his continuance in office.
2. He must not have been accused of sedition and disloyalty.
3. He must not belong to certain other classes which are prohibited from voting by the laws of the Congress on grounds of race, color or sex.

Method of election. There is no uniform method of election, it varies from State to State. Each state has a certain quota of representatives to send to the House. This quota changes according to the population, as Indicated by the decennial census. For purposes of election, every State is divided into as many districts as it has representatives to elect. Each district elects the representatives; electoral districts are determined by State legislatures.

This plan of dividing states into districts has led to an intestig but nefarious practice of **'gerry mandering.'** This practice is associated with the name of Governor Elbridge Gerry (1812) of Massachusetts, who was the first person to allow the use of this practice. This simply means that the party in power in the state legislature divides the State into electoral districts for purposes of election in a manner which penables it to spread its majority over as many districts as

possible and to concentrate or hive the opposition party in as few districts as possible. This practice had led to many evils but now American public opinion is graduallyranging itself against it.

The election takes place on Tuesday following the first Monday in November, after every two years throughout rhe country. Voting is none by secret ballot. In cases of elcction disputes the House decides itself. Since 1933 the house, after its election, meets on the fourth of March of the coming year. This is the actual date from which the life of every new house is counted. The Constitution requires that there should be, at least, one session a year. A session may continue for unlimited time. The President may call special sessions. Presidents Theodore Roosevelt. Wilson and Hoover called such sessions quite often. Most of the legislation in 1913 was passed in a special session. Sessions of the House are public.

Privilegs. The members of the house enjoy certain privileges. These are :

1. They cannot be impeac hed.
2. They ace immune from arrest except "for treason, felony, or the breach of peace," while coming and going to the session.
3. They enjoy freedom of spceeh in the House. They can not be accused before any court outside the House for any speech made on the floor of the House. The House, howeyer, may expel a member for misconduct if two-thirds majority so decides.
4. They are allowed to send their mail free.

Salaries and allowance. They get $10,000 as salary. The Speaker of the House gets 15,000 as salary. In addition to the above they get 24 cents pec mile as travelling allowance *plus* $5.000 a yecr for clerk hire. Othes perquisites include stationery telegragh and telephone services etc All these make a huge sum. Indeed, the House of Representatives is perhaps the most expansive law-making institution in the world."[1]

Organisation. The house meats on thc 4th March after its election under the chairmanship of the Clerk of the preceding house. A roll call of the m-mbers-elect is taken alphabetically statewise—thus Albama coming first and Wyoming last. Then an oath is administrated to the members as a body, after which, the house proceeds to elect its regular presiding officer the speaker, and othet officials like the Clerk, the Chaplain, the Sergeant-at-Arms, a door keeper and a post-master. The election of the officials is held on party lines Except the speaker, all the officials are elected on 'slate' basis, *i.e. en bloc.* They need not be members of the house, and generally, they are not.

1. Haskin, F. J. American Government, p. 316.

After the election of the officials, the house proceeds to adopt the rules and regulations of the house. These rules are similar to those observed in the previous house. If any modifications are required, they may be proposed now. After the rules have been adopted, the house elects its various committees.

The Speaker : Election The Speaker is elected at the first session of the house after its election. The election is held on party lines ; it is the majority party that elects the speaker and not the whole house as does the House of Commons in England.

The result is that the speaker is not a non-party man as the speaker of the House of Commons is. The Speaker of the House of Representatives is a partisan, in fact, he is the leader of his party in the house. While discharging his functions as speaker, he favours his party members and prefers party measures. He comes down from his chair and takes part in the debate. As a speaker he is free to discharge his duties as a party man for party ends.

Functions. The speaker has to perform many functions the more important of which are :

1. He preserves order and decorum in the house. He may order the galleries and lobbies to be cleared off if there is much disturbance and noise.
2. He " recognises " members on the floor of the house when they stand for speaking.
3. He decides points of order.
4. He signs all acts, addresses, joint resolutions, writs, warrants and *subpoenas* ordered by the House.
5. He puts all questions to vote.
6. He appoints select and conference committees from time to time as authorised by the house.
7. He exercises a right to vote in cases of a tie or when the vote is taken by ballot.
8. He has to decide whether a bill be referred to this committee or that, when the Clerk of the House is in doubt.
9. He may refuse to admit certain motions.

These functions have increased the authority of the speaker enormously. The debates in the house may be so arranged that the whole of the time may be taken by the members of the majority party. The members of the minority party may not be " recognised ". The points of order are all decided by the speaker and often in favour of his party. Any motion which the minority party may want to bring in may not be admitted by the speaker. The powers of the speaker are so vast that he may be called a ' Czar ', or an ' autocrat, ' as Reed and Cannon have been termed. Before 1910, the speaker possessed the power of appointing the members of all the

committees of the house and that of presiding over the most important committee—the Committee of Rules. But since then, this power has been taken away from him by the house itself. This. however, does not mean that his position has suffered very much. All the other parliamentary functions, which he performed, remain with him and are exercised in favour of the party to which the speaker belongs.

Committees. Due to the large membership of the house and the heavy work to be disposed of. the house has adopted the committee system. The number of these standing committees is not fixed. Before the nineteenth century, they numbered only a dozen or so ; before 1927, their number rose to 61. Since then their number has decreased to 47. However, the more important of these committees are not more than a dozen, some of which are :—(1) Ways and Means ; (2) Appropriations ; (3) Judiciary ; (4) Banking and Currency ; (5) Inter-State and Foreign Commerce, etc. etc. Besides these standing committees there may be appointed Select and Conference Committees from time to time.

Standing Committees : A Standing Committee generally consists of twelve members. In certain cases, its membership may range from 2 to 35. The members of these committees belong to both majority and minority parties in the House. Each party is represented on these committees according to its strength in the House. These parties choose their representatives themselves. The House merely ratifies the choice of different parties.

The chairman of each committee is selected by the seniority rule. The seniormost member of the majority party representatives on a particular committee becomes its president. This method ensures men of experience as chairmen. But the defect in such a system is that new members, though able and intelligent, can not hope to become chairmen so soon. The chairman guides and directs the proceedings of the committee, leads the debates and reports their results to the House.

There is no definite rule about the meetings of these committees. Minor committees seldom meet. Out of the more important committees, nearly three or four meet regularly each week ; the others meet when a bill is referred to them or when the chairman calls them.

Committee on Rules. The most important committee of the house is that on rules. It exercised dictatorial powers before 1910. The speaker of the house was its chairman and the other two members were also appointed by him. But since then, the speaker has ceased to be its chairman and its membership has been increased to twelve. Members are now elected by different parties in the house. Though the control of this committee over the house has been diminished, yet it exercises great influence over the business of the House.

Powers. 1. The committee proposes rules to be adopted by the house at the beginning of the new Congress, and

examines any amendments or new rules proposed by any member of the house.

2. It may introduce special rules of its own making, limiting debates, arranging the precedence of bills or resolutions to be considered by the House. At other times, the committee may bring quite a different bill of its own making to be discussed while another is pending in the House.

3. It may indicate that certain parts of the Bill before the house will be amended, and others not.

4. It may originate bills itself and get it passed by the house even without reference to any standing committee as in the case of the passage of the Ship Subsidiary Bill in 1915.

Thus the minority parties are at the mercy of this committee. They have no appeal against it except of turning themselves into a majority and using the same machine in their favour against other minority parties.

Select and Conference Committees. These are selected by the speaker from time to time. Select committees are selected for particular purposes, after which they disappear. The conference committees are selected to confer with similar committees of the Senate for making up differences between the two houses over a certain bill or clauses thereof. They are appointed by the speaker. The conference committees include the president and other members of the committee to which the bill had been referred.

Committee of the Whole House. The house often resolves itself into a Committee of the Whole House. The purpose of this committee is to consider matters concerning revenues, appropriations, and private bills. The house may resolve itself into a committee of the Whole House on the motion of any member. The quorum is 100. When the House resolves itself into a Committee of the Whole House, the speaker leaves the chair and a special president, designated by the speaker, presides. Then business is proceeded with. Every member can speak for not more than five minutes; voting is done by show of hands or by tellers. When its deliberations are over the committee votes to rise and the speaker takes the chair. Decisions which are reached in the Committee of the Whole House are generally ratified by the house. This ensures every member an opportunity to speak and propose amendments.

Procedure. Any member of the house can introduce a measure. As there is no cabinet or government members in the house, every member is at liberty to introduce as many bills as he likes. Hence members, to please their constituents and other vested interests on whose support their election depends, and to get their names published in newspapers as authors of bills, are ready to introduce unlimited number of bills and resolutions. The total number of bills and resolutions introduced in the Congress ending March 4. 1931 was 25,436. These bills originate mostly with the persons, groups or organisations entirely outside the legislature. The other source from which measures come

is the President and his administration; real legislation comes from there. The law-making process in the House is as follows:

I. The First Reading. Any member can "introduce" a bill by dropping it, with his name affixed on it, in the box on the Clerk's table. Every bill—whether public or private—can originate in both the houses, except money bills, which can originate only in the lower house.[1]

After the introduction of a bill, it is referred to the appropriate standing committee. In case of doubt, the speaker decides as to which committee a bill should go. In certain cases, a bill is referred to one committee and afterwards to another. In the case of a private bill, it is generally referred to that committee to which its author wishes it to be referred. After a bill is referred to an appropriate committee, it is printed and distributed to all the members of the House.

II. The Committee Stage. As soon as a committee receives a bill, it proceeds to study its contents and gather information on the subject of the bill. It may use the Congress Library or Committee Library, or the Reports of the special investigation committees or commissions, or may study official files. In certain cases, the committee may consult outside persons or institutions who are particularly interested in the proposed legislation. This is a unique feature of the American system of law-making. In other cases the committee may appoint a sub-committee consisting of four or five of its own members to make a special study of the subject.

Four courses are open to the committee to express its decision:

1. It may report the bill in its original form and thus approve of it.
2. It may amend a bill.
3. It may substitute a new bill in its place.
4. It may not report on the bill at all and thus pigeonhole it. Nearly one-half or three-fourths of the measures introduced are killed in this way.

The house can ask a committee to report on a bill within fifteen days, if it is demanded by the majority of the house. But it is very difficult to get a majority of the house for this minor matter and particularly in the case of bills which are introduced by private members.

III. The Calendar Stage. After a bill has been reported by a committee, it is assigned to one of the three series of lists, known as "Calendars." These are:

1. **Union 'Calendar'.** It is composed of the Committee of the Whole House on the State of the Union. All bills involving revenues and appropriations, or other public bills involving money and property, are assigned to this calendar.

1. The process of legislation in money bills is discussed separately under Financial Legislation on page 214.

2. **House 'Calendar'.** All public bills, other than those referred to 'Union Calendar', are assigned to this calendar.

3. **Private 'Calendar'** or the 'Calendar of the Committee of the Whole House.' All private bills go to this calendar.

IV. **Second Reading.** After a bill has been assigned to a calendar, the second reading takes place, either in the House or in the Committee of the Whole House. At this stage amendments are proposed, speeches are made, measures are condemned or upheld. The second reading is a stage of real discussion and debate. Members can speak for not more than one hour each. Then the vote is taken whether "the bill be engrossed and read a third time." If it is carried, the bill is ready for the third reading.

V. **Third Reading.** This is only formal and consists in merely reading the title of the bill.

After the third reading the speaker puts the measure to the vote of the house which may vote in one of the following ways.

Method of Voting. There are four methods of voting:

1. By 'sound of voices,' *i. e.*, a *viva voce* vote. This is usually employed unless other methods are demanded.
2. *Rising vote.* If doubt prevails any member may ask for a rising vote. The supporters of the measure and the opponents stand and are counted respectively.
3. If one-fifth of the quorum (majority of the whole number) are still dissatisfied, vote may be taken by tellers. Two tellers are appointed by the speaker. They stand and first the members in favour of the measure and then those opposing it, pass between them. The result is declared by the tellers and announced by the speaker.
4. '*Yeas*' and '*Nays*' *Method.* This is resorted to only in the House, sitting as such. (It is never applied when the house is sitting as a Committee of the Whole House. which makes use of the above three methods.) If one-fifth of the present members are dissatisfied with the voting, the 'Yeas' and 'Nays' method is used. The Clerk calls the names of the members who respond with 'Yes' or 'No'. The result is announced according to the respective strength of 'Ayes' *i. e.* those who support the measure and 'Nays' *i. e.*, who are opposed to it. This method may be demanded before any one of the above methods is used. This is generally employed by minority to delay the measure.

After a measure is passed by the House, it is certified by the Clerk and goes to the Senate. If the Senate rejects it, the measure is killed. If the Senate passes the measure, it goes to the President for his signature. If the Senate amends the measure, it again comes back to the house. If the house accepts

these amendments, well and good. If it rejects, the conference committees of both the houses are appointed to make up the differences and to arrive at a compromise. Nearly one-tenth of the bills are referred to such conferences. If no compromise is arrived at the bill is killed, unless other similar committees are appointed and prove more successful. If a compromise is arrived at the bill is either accepted or rejected *in toto* by both the houses. The proceedings in these conferences are secret. After a bill has been passed by both the houses it is sent to the President who may treat it in one of the following fashions;

1. When a bill reaches the President, he may sign it within ten days of its receipt and it becomes a law.
2. He may not sign it and send it back to the house in which the bill had originated with his arguments and reasons for not signing it. Then if the bill gets two-thirds majority in both the houses separately, it becomes a law notwithstanding his opposition.
3. He may not sign it, but if the Congress is in session it becomes a law after an expiry of ten days from the date it was presented to the President.
4. He may withhold a bill on his table and the measure will be killed if the Congress adjourns before the expiry of ten days. This is known as pocket veto.

Financial Legislation. The procedure in case of financial legislation, *i.e.*, revenues and appropriations, is quite different. This may be studied under two heads: (1) pertaining to revenues and (2) pertaining to appropriations.

I. Revenues. All measures for raising national revenues originate in the House of Representatives. These revenue bills are drafted by a committee on ways and means of the House. The committee takes public hearings and consults the interests affected before final drafting. In this committee, the proceedings and drafting of the bill is controlled by the representatives of the majority party. When the bill is given a final shape, the minority members of the committee are called in to have a formal vote of the whole committee. After this, the bill is reported to the house. The bill is debated in the house, the members particularly, those of the minority party are given an opportunity to criticise and propose amendments. It is seldom that the minority members can force their way. After the passage in the house, the bill is sent to the Senate. In the Senate, amendments may be proposed, certain clauses omitted and others inserted. In case of differences between the two houses, the bill is referred to a conference committee, consisting of members of both the houses; this committee strives to arrive at a compromise. Its proceedings are secret. Whatever its decision, it is certain to be accepted by both the houses. After this, the bill goes to the President and becomes law with his signature.

LIBRARY.

2. **Appropriations.** The constitution requires that "no money shall be drawn from the treasury but in consequence of appropriations made by law." Hence, every appropiation is to be enacted in law by the Congress. Let us see how it is done.

Old Method. Formerly, the method was simple. All the departments estimated their expenditure for the ensuing year and sent these estimates to the Secretary of the Treasury, who, in his turn, directed these estimates, along with the estimates of expected revenues from the existing tax laws, to the Speaker of the House.

The speaker assigned these estimates to different committees according to their nature,—the estimates for posts and telegraphs to the Committee on Posts and Telegraphs, the estimates on military departments to the Committee on Military Affairs etc. etc. These committees discussed the estimates separately and reached certain conclusions. These were reported to the house and the latter, then, ratified these conclusions. The defect of this system was that there was no unity in the budget. The committees could not know what their share of revenue was; again, while one committee might be economising, the other might be cutting loose with extravagance. There could be no responsibility. The waste involved in this system was enormous. The need for a unified and centralised budget system was felt keenly during the Great War of 1914-18. This resulted in the passing of the Budget and Accounting Act in 1921.

New Method. Under the Budget and Accounting Act, 1921, two new agencies were established:

1. The General Accounting Office was established with a Comptroller-General at its head. The function of this agency is to investigate all matters relating to revenue and expenditure. This agency decides all claims against or due to the national government. This implies a power of seeing that the measures of the budget, as enacted into law, are properly executed. The Comptroller-General has a right to make reports to the President and the Congress.

2. **The Bureau of the Budget.** Its head is the Director of the Budget. He is appointed by the President alone and is responsible to him. He is personal adviser to the President in matters of finance.

All departments prepare their estimates as before and send them to the Bureau of the Budget. The head of the Bureau of the Budget goes through these estimates and coordinates them. He has the authority 'to assemble, correlate, revise, reduce or increase the estimate of the several departments or establishments."[1] He confers with the heads of departments concerned in case he wishes to propose changes in their estimates. Generally, his wishes prevail. Along with these estimates he "complies a table showing estimated receipts for the year, including income from existing and proposed taxes.'.[2]

1. Ogg and Ray, Introduction to American Government, (1935), p. 474.
2. Munro, Government of the United States, (1932), p. 371.

After these preliminaries the budget is drafted. The President has a right to propose or add his recommendations. Now, the budget is ready in one unified form to be presented to the Congress. Thus, to-day, the real initiation of the financial policy of the federal government belongs to the executive.

The house receives the budget from the President. It refers the budget to its Committee on Appropriations. The committee resolves itself into a number of sub-committees to study different estimates. These committees call for the evidence of the officials of the departments concerned. After they reach certain decisions, the committee as a whole prepares its report and the bill is reported to the house with its approval or amendments.

Besides the budget, the departments can propose supplementary estimates. These also pass through the same stages as the budget.

The members of the house have a right to propose any bill. Hence they can propose any measure, even those involving expenditure. Such measures are referred to the appropriate committee first. If it approves of the measure, it is referred to the Appropriation Committee, which in its turn, reports it to the House.

After the bill is reported by the Appropriation Committee to the house. it passes through all the stages through which an ordinary bill passes. The house has a right to amend it as it may please, but this right is seldom exercised because of the niceties of the budget and deficient knowledge of the members about finance.

After the passage of the bill in the house, it is sent to the Senate. There it goes through the same stages as in the lower house. In the Senate amendments may be proposed and generally they are. The bill in its amended form, as passed by the Senate, is referred back to the lower house. In case of differences between the two houses the bill is referred to Conference Committees of each house, wherein a compromise is arrived at. The compromise is adopted by two houses *in toto.*

Then the bill is sent to the President for his signature and after it is signed by him, it becomes law.

Criticism of the Budget System. The budget system, even in its present form, is not very satisfactory. Though there is no spreading of responsibility as it was under the old method, yet there is no concentration of responsibility either. The initiative belongs to the Bureau of the Budget, but it does not exercise any control after that. The Congress may increase, decrease, or reject its demands. It affords too much scope for evading responsibility, which is divided between the executive and the Congress. In other countries, for example, in England and France, it is concentrated in the executive.

The Senate. It is the upper chamber of the Congress. It was established to give equality to the units of the federation. Hence every state sends equal number of Senators which is two.

There being forty-eight states in the Union, the total number of Senators is ninety-six They are now elected by a direct method of election.

Qualifications. 1. Senators must not be less than thirty years of age.

2. They must have been residents of the U. S. A., for nine years at least.

3. They must be inhabitants of the State which they represent.

4. They my not hold any office, during their term of office, under the United States.

Method of Election. The constitution provided that the senators be elected by the legislatures of the States, so that intelligent and able persons would be elected and would present the state as a whole and not particular parties and interests. The system could not work well. There were deadlocks, and seats remained vacant for years together. Hence, a direct method has been evolved by the Seventeenth Amendment in 1913. Now the senators are elected directly by the people of the States. The electors of the members of the most numerous branch of a state legislature, are entitled to vote. When there is a vacancy, the Governor of the State may make temporary appointments for the rest of the term.

Term. Senators are elected for a term of six years, one-third retiring every two years. This gives continuity to the Senate. It never dies. This is the real cause of its pre-eminence over the House of Representatives. The members can devote themselves to their work more seriously and calmly than the representatives, who no sooner they are elected are worried by the anxieties of the next election.

Privileges, Salary and Allowances. The privileges, salary and allowances enjoyed by the senators are almost the same as those enjoyed by the Representatives, except that the Representatives enjoy an extra right of sending their mail free of postage. As in the House of Representatives, the expenditure of the Senate is very high, so much so that the Senate's expense account is said to be "the world's greatest swindle sheet." [1]

Organisation. The Senate is a continuous body. Hence, it does not go through all the formalities through which the House has to go. The Senate has got its own rules and regulations, but does not adopt them *in toto* as the House does. It does not select its presiding officer. The Vice-President of America, elected by the people directly, presides over its meetings. He is not a party leader as the speaker in the lower house is ; nor he is so partisan in the performance of his duties. He does not possess so much influence over the legislation as the speaker of the House does. He has powers of recognition and deciding points of order and others which his office

1. Ogg and Ray. Introduction to American Government, p. 356.

requires of him. But these powers are not unlimited as in the case of the speaker. The power of recognition is exercised less partially.

The power of deciding points of order is subject to an appeal to the Senate by any Senator ; in fact, most of the important points and orders are decided by the Senate itself. He does not possess any vote.

In the case of his absence or illness or death the Senate elects a president, *pro tempore* to preside over its meetings. This election, of course, is held on party lines.

The president of the Senate administers oath to the newly elected members.

Committees. The Senate also has its own committee system. There are thirty-three standing committees in the Senate. These committees are elected and composed on the same lines as in the House. The most important committees are not more than ten. Some of these are : (1) Committee on Finance ; (2) Committee on Appropriations ; (3) Committee on Foreign Relations ; (4) Committee on Judiciary etc. etc. The membership in these committees ranges from three to twenty-four. The seniority principle prevails in the Senate as well. However, the chairman of one committee of the first ten important committees,—appropriation, agriculture, commerce, finance, foreign relations, int r-state commerce, judiciary, military affairs, naval affairs, and post-offices and post-roads—can not be the president of another committee, and no Senator can be a member of more than two such committees.

Legislative Procedure. Legislative Procedure in the Senate is similar to that in the lower house. However, there are certain slight differences. Firstly, the appropriation bills enjoy a certain amount of priority. Secondly, there is no limit on debates, and speeches. A Senator can go on speaking on a particular measure for unlimited amount of time. The leads to a thorough discussion of the subject from all angles. The minorities get an opportunity to let their viewpoint known, and even accepted.

But, sometimes, this freedom of speech is abused. A small group of Senators may determine to defeat a bill. They make long speeches turn by turn and talk the bill over to death. This is known as '*filibustering*.' These speeches are not always relevant to the subject under discussion or debate. In 1903 Senator Tillman started reading Byron's *Childe Harold* and announced that unless his view point is accepted, he would go on reading poems like this. The Senate had to yield. In 1917, a small group of twelve defeated a bill authorising the arming of American merchant ships. The House of Representatives had acted and majority of the Senators were ready to act, but the Congress could not act because a handful of Senators had decided not to act. "The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. A little group of wilful men, representing no opinion

but their own, have rendered the great government of the United States helpless and contemptible.....The only remedy is that the rules of the Senate be so altered that it can act," wrote President Wilson.

Hence, the Senate adopted a rule in 1917 by which it has been made possible to limit the debate. If sixteen Senators file a petition to close the debate, a roll of Senators is called on the question. If two-thirds majority agrees, the Senators can not speak for more than one hour. No amendments can be proposed except by unanimous vote. All the points of order are decided by the President without discussion.

This method has not been very popular because it is very difficult to get two-thirds majority. However, it has been employed successfully twice in 1919 and 1926, two times in 1927 and once in 1930. Filibustering is not so often resorted to now because sessions are long. However, if it is practised any time the above method can be well depended upon.

The sessions of the Senate are public, though secret sessions may also be called.

Powers. The Senate has very extensive powers, larger than those enjoyed by the House. This has been made possible by certain advantages enjoyed by it as compared to the House. Some of these advantages are :

1. The membership of the Senate is small ; but its tenure is long. The Senators are not worried about their election after every two years as the representatives are.
2. Senators are older in age, with wider knowledge of public affairs and greater legislative experience.
3. The Senate has less wealthy members than it had twenty-five years ago. There are no outside interests. *i.e.*. 'lobbyists', working in the Senate as in the House. In fact, the Senate has been inclined to curb lobbying.
4. The debates in the Senate are unlimited and the presiding officer is not so partisan as the speaker of the House. This provides an opportunity to every member of the Senate to speak and propose amendments. Bills and resolutions are discussed from every view point.
5. It shares certain executive powers with the President, which the House does not. This means the patronage in the gift of the Senate.
6. There is higher talent in the Senate than in the lower house.
7. There is no leadership in the House of Representatives as in the lower houses of other countries. This makes the American lower house weaker in relation to the Senate and provides a real cause for the success or predominance of the Senate over the House of Representatives.

The Senate enjoys legislative, executive and judicial powers.

Legislative. It has the same legislative powers as the House of Representatives, except that a money bill must originate in the lower house. In case of money bills also, the Senate can amend them and reject certain clauses and add others. The Senate may even pass a bill which is, in effect, and even in technical form, a revenue bill, before the House takes any action on the matter.

The more important power of the Senate is to investigate. Though the House also appoints committees of investigation, yet the com~ ttees appointed by the Senate carry more weight. It is h` at scandals are exposed, defects in administration are cri icised and condemned.

Executive. 1. The approval of the Senate is necessary for all appointments made by the President. It exercises a great influence in this sphere, as seen while discussing the power of appointment of the President.

2. Two-third concurrence of the Senate is necessary for the ratification of treaties concluded by the United States with other countries.

These powers are enjoyed exclusively by the Senate. The House has no share in such powers.

Judicial. 1. The Senate acts as the Chief Court of Justice in cases of impeachment. All impeachments are tried before the Senate. "The President, the Vice-President, and all civil officers of the United States" can be impeached before the Senate. Ten such important cases have been tried by the Senate Most important of these trials are those of Senator Blount, President Johnson and Belknap. In 1797, William Blount, senator from Tennessee, was tried before the Senate on a charge of a conspiracy to stir up troubles in Florida and Louisiana. He was expelled from the membership of the Senate, but otherwise he was acquitted because he was not a "civil officer of the United States." Belknap was the Secretary of War in 1876. He had accepted money from a trader, who was appointed by him to an Indian post. But the Senate acquitted him also.

Andrew Johnson succeeded to the Presidency after the death of President Lincoln. The Congress was hostile to him and the relations between the two became strained. The question of reconstructing the Southern State made these relations still worse. The President refused to abide by the Tenure of Office Act, 1867, passed by the Congress. Though legally he was right, as afterwards this Act was repealed, yet this led to further worsening of their relations. Consequently he was impeached before the Senate. Eleven charges, mostly based on "discourtesy to Congress," were levied against him. But he was acquitted as two-thirds majority of senators necessary for impeachment could not be got. The voting was 35 for impeachment and 61 against impeachment.

This makes the Senate the most powerful second chamber in the world. To-day, it is 'the only example in the world of a second chamber that is incontestably more powerful than the first.'[1] No other Upper Chamber, including the House of Lords in England and the Senate in France, enjoys so much powers as the American Senate. They certainly do not enjoy executive powers as extensive and vast as are enjoyed by the American Upper House. In money matters, the House of Lords has no power at all, and the Senate of France enjoys less powers than those of the American Senate. The position and influence of the Senate has been well summed up thus: "There are things which the President and the Senate may do without the assent of the House of Representatives, and things which the House and the Senate may do without the assent of the President, yet the President and the House can do comparatively little without the consent of the Senate." The Senate, in the governmental system of the United States is indispensable. The Senate has provided many Presidents to the United States—Monroe. John Quincy Adams, Van Buren, Jackson, Johnson, the two Harrisons, Tyler, Pierce and Harding.

Powers of the Congress. Thus we have seen that the two houses of the Congress exercise legislative, executive and judicial powers. Let us now consider the basis and the source of these powers.

Express Powers. The most important source and the only source of the powers of the Congress is the constitution of the United States. It specifically provides what things the Congress will do and what it will not do. Thus Congress does not possess inherent powers as the House of Commons in England does; its powers are delegated. According to the Constitution (Article 1, Sections 8) the Congress enjoys the following powers:—

Section 8. 1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States; and with the Indian tribes;

4. To establish a uniform rule of naturalization, and uniform laws on the subject of the bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

1. H, B. Lees-Smith, Second Chamber in Theory and Practice, (London. 1923).

8. To promote the progress of science and useful sets, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

11. To declare war, grant letters of marque and teprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14 To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

16. To provide for organizing. arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of

another ; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in an other.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. 1. No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit : make anything but gold and silver coin a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress.

3 No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Implied powers. The Congress, besides these express powers granted by the constitution, exercises other powers which are not mentioned in the constitution, but are very necessary for the performance of its duties and giving effect to its constitutional or express powers. These powers are known as implied powers. The power of establishing banks is implied in the express power " to borrow money."

Nature of these Powers. These powers are mostly permissive. The Congress may exercise them or may not ; it may take advantage of its powers to a full or to a lesser degree or not at all. But some functions are such as the Congress must perform. These may be called mandatory powers. The Congress is required to pass legislation for taking census. The appellate jurisdiction belongs to the Supreme Court, but the Congress shall make rules and regulations under which it will have such jurisdiction. Thus the Congress must pass legislation in certain matters otherwise chaos and confusion may arise.

Influence of the Congress. The Congress exercises constituent, legislative, executive, administrative, supervisory and directive, and judicial powers. From the beginning, all amendments to the constitution have been initiated and proposed in the Congress and it is still the Congress that decides on

the method of ratification of these amendments. It enacts all laws, it directs administration. Three-fourths of its laws concern the working of the administration and are not laws in the strictest meaning of the term. It shares in the work of the executive, *i. e.*, in making appointments and the treaty-making powers. It determines the organization of the judiciary. It determines the pay of every servant of the federal government. It institutes investigating committees to go into administrative and executive work, for which the President is responsible. It exercises a general supervisory and scrutinising control over the government. It declares war by a resolution and not by a statute. The two houses acting together, have the power to impeach any civil official of the federal government for 'high crimes and misdemeanors." It acts as an elective body when the election of the President and the Vice-President is thrown on the Congress. On such occasions the House elects the former and the Senate the latter. Thus the powers of the Congress are vast and numerous.

However, the influence of the Congress is more apparent than real. The real power belongs to the President. The Congress can not control the President and his Cabinet as the House of Commons in England or the Parliament in France does. The Congress can investigate, criticise and condemn but it can not control. The actual formulation of policy belongs to the President. Though the Senate shares in the appointive and the treaty-making power of the President, yet the real patronage is in the hands of the President and it is only presented with final results. The President may evade this necessity of concurrence in the latter case by entering into "Executive agreements." Revenue bills and appropriation bills are passed by the Congress but the budget is prepared by the President and his Bureau of the Budget. The Congress has little control over that. In matters of legislation the President has come to be the chief legislator. Most of the legislation originates in the administrative departments and the White Hall. We have seen how the President can influence the course of legislation in the houses through his messages and threats.

The Congress lacks leadership. The House, being elected for two years, lacking intelligent and capable persons; with the Seniority rule; having no party leadership as in England; being influenced by lobbyists always judges every measure in the light of local interests. There is no nationalisation of business. "The Congress is too big and too incoherent of itself to devise an organic and unified approach to the problems of the time. It is not effectively organised to take a continuous initiative."

The leadership of the nation has passed to the President. The Congress, having no positive policy, tries to enhance its prestige by opposing and harassing the President, Senator Borah is more popular not because he is intelligent but

because he obstructs the President at every stage. Hence, the people look to the President and not to the Congress for direction. The President can appeal to them but the Congress can not. The American people and other nations of the world look to the President for any action the United States will take. The Congress is merely a representative body. It is an agent of the people and not the people themselves as the British Parliament is.

QUESTIONS AND TOPICS

1. What are the powers of the Congress ? What is their source ?

2. Describe the relation between the Congress and the President. Bring out the real importance of the Congress in the machinery of government in the U. S. A.

3. Compare the powers of the Senate with those of the House of Lords or those of the French Senate.

4. Describe the 'procedure' in the House of Representatives.

5. Describe the committee system of the Congress.

6. "The American system, in its ultimate foundations, is built upon a belief in weak government." Comment.

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CHAPTER 26

THE FEDERAL JUDICIARY

The third article of the Constitution vests the judicial power of the United States "in the Supreme Court, and in such other courts as the Congress may from time to time ordain and establish" It needs to be pointed out that the states of the Union had their regular courts of law before the Union, but still the federal government established its own courts. This meant a dual system of courts existing side by side—one federal the other state. What was the necessity of a federal judiciary? Why was it established as a separate system and why the already existing courts were not utilised by the federal government? These are some of the questions which need clarification.

Its necessity. The administration of justice is the function of the state, as crime is not only an offence against its victim but also against the state in which it is committed. This is much more true in a federation, where the parties concerned are not always under the same jurisdiction. Quarrels may arise between the federation and the component parts; between different units; between citizen of one State and the citizen of another State or between citizen of one State and another State. If these cases were left to be tried by the State Courts, there would have been chaos. Then cases might arise out of treaties, and political, commercial and maritime relations with other States, or controversies about the status and rights of ambassadors. agents or ministers of foreign nations; all these should be tried by the tribunals of national government, as all dealings of the U. S. A. with other countries are carried on by the national government. Then there may be ambiguity about the interpretation of the constitution and the laws passed by the Congress; certainly state courts cannot be entrusted with their interpretation. There would be no uniformity and the meaning of the clauses of the Constitution and the laws of the Congress would differ from one state to another; nor there would be impartiality. Then there may arise disputes between the national government and the citizens of the United States. Such cases could hardly be submitted to state courts; states are necessarily inferior to the national government. Again, the National Government could not confer jurisdiction on courts which are not created by itself. Hence, the necessity of an independent and separate judicial system of the national government.

Scope of judicial jurisdiction of the National Government. The federal judicial courts have jurisdiction over those subjects which are specifically mentioned in the constitution, as coming within the competence of the Congress. The rest are

subject to the jurisdiction of the state courts. The constitution provides :

" The judicial power of the United States shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority ; to all cases affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversy to which the United States shall be a party ; to controversies between two or more states, between a state and citizen of another state ; between citizens of the same states claiming lands under grants of different states, and between state and state, or the citizens thereof and foreign states, citizens, or subjects."[1]

1. *Cases arising under the Constitution, Laws of the Congress and the Treaties.* All cases which involve ambiguity about the interpretation of these three instruments or any part thereof are tried by the federal courts. All rights claimed under the constitution or under the laws or under treaties are protected by the federal courts. When a law or a provision of a treaty interferes with the rights of the individual or the states, such cases should be referred to the federal courts.

2. *Cases affecting Ambassadors, Ministers and Consuls.* This is more a negative than a positive power. Foreign representatives are immune from the jurisdiction of the courts of the country to which they are accredited. Hence the Courts of the United States have no jurisdiction over foreign ambassadors, ministers or agents or consuls in the United States. This clause was meant to keep the state courts in check from any infringement of international law.[2]

3. *Cases arising under Admiralty and Maritime jurisdiction.* By admiralty and maritime cases is meant those cases which, concern the ships of the United States while on the high seas or in its territorial waters or foreign ships navigating in its territorial waters. These cases include crimes committed on ship board, breach of contracts which may have to be executed on high seas or in navigation waters. All prize cases arising out of capture of ships are tried by federal courts.

4. *Cases arising out of controversies* to which the United States is a party or controversies to which different states of the union are parties, or to which citizens of one state and another state are parties, or the citizens of the same state are parties. These cases arise so often that it is in the fitness of things that they should be tried by the federal courts if impartial justice is to be had. In cases between citizens of different states, only such cases are brought before federal courts which involve federal rights or exceed certain sums of money.

Thus federal courts exercise both criminal and civil jurisdiction.

1. The Federal Constitution, Article III, section 2, clause 1.
2. Munro. The Government of the United States, p. 476.

Concurrent jurisdiction. Federal judiciary courts do not possess *exclusive* jurisdiction in the matters discussed above. In some of these matters, state courts also enjoy concurrent jurisdiction with federal courts. Federal courts enjoy exclusive jurisdiction in the following matters :

1. All civil cases in which a State is a party.
2. Crimes, penalties and seizure cases.
3. Admiralty and maritime cases.
4. Patent right, copyright, and bankruptcy cases.
5. Cases against ambassadors, ministers, agents and consuls.

Concurrent jurisdiction is enjoyed by state courts in all other cases which come under the jurisdiction of federal courts.

What is the Law the Federal Courts Administer ? The law, which these courts administer, consists of two branches, the common law and the statutes. The statutes are passed by the Congress, the state legislatures and the municipal councils. Though the Congress cannot make laws beyond what the Constitution grants, its implied powers are very great. Most of these statutory laws either enact or supplement common law. Common law is not a written law but it is the result of custom and practice and their interpretations by the judges and courts. This has developed from time to time and has adapted itself to the changing circumstances. Besides Law, there is Equity. It had its origin in medieval times. It has grown out of the right of mercy exercised by the king, or rather the Court of chancery on behalf of the king. It has developed since then and to-day it is as much written as other law. It is no more the right of mercy which the judges exercise, but ' it is merely a set of rules which must be applied by the court, with an unfaltering hand, even as laws are applied and with no room for the play of a judicial conscience, It is merely a special branch of law '[1] Equity deals with persons and law with articles.

Procedure. The procedure in federal courts is regulated by various statutes of the Congress beginning with the Judiciary Act of 1879, and ending with an Act in 1911. In minor points of procedure, the courts regulate their procedure themselves. The powers of the Congress to make rules for a regulating procedure in federal courts are limited by the Bill of Rights.

Organization. The constitution does not provide for the organization of the federal judiciary. It merely makes provision for a Supreme Court and leaves the rest to be accomplished by the Congress. The Congress, by the Judiciary Act of 1789, created the following courts :

District Courts. These are the courts of first instance. There are eighty-four district courts in all. Small states have one district court each : and bigger ones are divided into many

1. Munro, W. B. Op. cit., page 483.

districts and thus have more than one such court. A district court consists of one or more judges. A judge may serve on two or three district courts in the case of small states. The judges are appointed by the President in concurrence with the Senate on the advice of the Attorney-General. The number of these judges is approximately 146.

The courts hold sessions three or four times a year at different places in the district. The district courts have their own officials. The Attorney-General represents the federal government in prosecutions before the court. The executive officer of the district court is called the Marshal. It is only in these courts that jury system prevails.

These courts possess only original jurisdiction. They hear cases involving federal jurisdiction. Cases from the state courts may also be transferred to these courts, before the state courts have decided them. Appeals from state courts are never taken to these courts. Most of the cases before the district courts are disposed of by them but in few cases appeals are taken to the Circuit Courts and in still fewer cases to the Supreme Court direct.

Circuit Courts. Above district courts come the Circuit Courts of Appeal There are ten Circuit Courts. The number of judges of a circuit court varies from three to six, according to the amount of litigation. These judges are appointed by the President in concurrence with the Senate. They serve during good behaviour. Besides the circuit judges the district judges may also serve on these courts. The judges of the Supreme Court also have a right to sit with these courts in their respective circuits. These circuit courts hold sessions at various cities in their respective circuits hearing appeals from the lower courts *i. e.* district courts.

These courts do not have any original jurisdiction but possess merely appellate jurisdiction. Appeals are brought up from the district courts. They also review and enforce orders issued by different administrative bodies like the Inter-State Commerce Commission, Federal Reserve Board and the Federal Trade Commission, etc. Their decisions in all cases, except those involving constitutionality of law, are final. In cases involving constitutionality of law appeals may be taken to the Supreme Court. However, in other cases also, on the petition of either party, cases may be transferred to the Supreme Court before the final decision is delivered by the Circuit Court.

Before 1922, there was no control over the District or Circuit Courts. All functioned independently; there was no link between the different sets of courts. Hence in 1922, the Congress passed an Act, which made the Chief Justice of the Supreme Court the chief supervising and directing head of the federal judicial system. He holds a conference of the senior members of circuit courts every year. The conference receives annual reports from the judges of the district courts indicating the conditions of work in their respective districts.

On the basis of this information, the conference arrives at a decision to make any reforms or proposals for the ensuing year. The transfer of judges from one court to another is also facilitated by such conferences. Thus the judiciary has been co-ordinated into one unified system.

The Supreme Court. The Supreme Court is the highest and the final judicial tribunal in the United States.

Composition. The Supreme Court consists of nine judges, eight ordinary judges and one Chief Justice. They are nominated by the President in concurrence with the Senate. They serve during good behaviour. The salary of the Chief Justice is $20,500 that of the associate judges $20,000 each. This varies from time to time as the Congress may legislate for. But during the term of a judge, his salary can not be reduced. Judges can be removed by impeachment on grounds of 'high treason and misdemeanour.'

Sessions. The Supreme Court has its own officials and makes its own rules of procedure. The court meets every year from October to May. The court used to sit in the old Senate Chamber at Washington ; but now a separate building has been erected for its sittings

The quorum is six. The judges sit together to hear a case, the Chief Justice in the centre and the judges on either side of him. Cases are heard on Tuesdays, Wednesdays, Thursdays, and Fridays. On Saturdays, the judges confer among themselves and arrive at decisions. The judgments are also written on this day. The decisions are arrived at by majority vote. Monday is reserved for delivering judgments. Judgments may have 'opinions' with them. 'Opinions' are of two types; 'Concurring' and 'Dissenting.' Those judges who agree with the majority decision may write their concurring opinions and those who do not agree may write their dissenting opinions. These decisions and opinions are printed and published regularly in a series of the Supreme Court *Reports*. Perhaps there is no other body in the world which conducts its business in such an impressive way as the Supreme Court of the U. S. A. Great punctuality and rigid silence are the two chief features of the court inspite of the fact that it is open to visitors and the public.

Jurisdiction. The jurisdiction of the Supreme Court extends to all matters, subject to the federal judicial authority.

It extends to both criminal and civil matters. The Supreme Court has original jurisdiction in certain matters and appellate in others.

Original jurisdiction extends to the follows ;

1. Cases affecting ambassadors, other public ministers and consuls.
2. Cases in which a State is a party.

Appellate jurisdiction extends to all other matters falling under the federal judicial anthority. Appeals come to the

Court either from the lower federal courts or from the highest state courts. All cases decided by these courts are not taken to the Supreme Court; only such cases which involve the interpretation of the Constitution, laws, or treaties and others involving the right of individuals or states guaranteed by the Constitution, are taken to that court. The court's jurisdiction extends to cases, actually brought before it. It never tenders 'advisory' opinions. It never pronounces that a particular law is constitutional or unconstitutional, good or bad, before a case involving that law comes before it. Nor the Supreme Court decides on political questions. Whether a State is 'Republican' or not is to be decided by the President or the Congress, nor by the Supreme Court. It is the business of the President to recognise a government of a state.

The Supreme Court, the Congress and the President. The federal judiciary is made independent of the other branches of the government. Their term during good behaviour and fixed salaries ensure independence. However, the federal judiciary is not so independent as it may apparently seem. The subordinate courts are created by the Congress. Their jurisdiction and salaries and procedure are also determined by the Congress. The President with the consent of the Senate appoints these judges. Even in the case of the Supreme Court, the Congress determines its organisation, appellate jurisdiction, and salaries of its judges. If the Court goes against the wishes of the Congress, it may withdraw its appellate jurisdiction over certain matters as was done before the Civil War. The President with the concurrence of the Senate might pack the Supreme Court, if he finds the existing judges are hostile to him. This resembles the old power of the king in England to create new peers to overcome the Lords' opposition. The Supreme Court Reorganisation Scheme of President Roosevelt in 1937 is an example of the manner in which the Supreme Court may be packed. The President may refuse to enforce the decisions of the court, and thus nullify its orders and decisions. In 'The Cheroka Nation *v.* Georgia,' the court decided in favour of the plaintiff; but President Jackson was in favour of the State of Georgia, and he refused to enforce the decision of the Supreme Court. But such cases are rare and the independence of the judiciary is maintained to a great extent. The Court has performed its functions with great freedom and independence.

The Supreme Court and the Constitution. The Supreme Court has acted as the defender and saviour of the American Constitution and the rights and liberties of individuals and the federating states. It has done more. It has developed the constitution by judicial interpretation. It has adapted the constitution made in the eighteenth century to the changed conditions and circumstances of the twentieth century. The Supreme Court is a constitutional convention. It not only interprets the law but also makes law. Theodore Roosevelt in a message to the Congress in 1908 remarked, "The chief law-makers in our country may be and often are, the judges, because they are the final seat of authority. Every time they interpret contract,

property, vested rights, due process, liberty, they necessarily enact into law parts of a system of social philosophy; and since such interpretation is fundamental, they give direction to all law-making." Professor Laski has called the Supreme Court a third chamber of legislature. President F. D. Roosevelt in March 1937, while speaking on his Supreme Court Reorganisation Scheme, remarked: 'The Court in addition to the proper use of its judicial function has improperly set itself up as a third house of the Congress—a super-legislature, as one of the justices has called it.' But how do they legislate? It is not that they pass any law as the Congress does or that they issue ordinances and executive orders as the President does. They apply the clauses of the Constitution and give these clauses such an interpretation that a super-constitution, a super-law, which is unchallengeable in certain respects, is created. The constitutional document has served as a starting point, or a taking-off ground as some one has called it, and over that new laws have been constructed. When the court decides what property is clothed with public interest, what constitutes liberty and what action constitutes a public purpose, it is legislating. The public policies are based on these judgments to a great extent. The Congress and the President have to form their policies which might not be pronounced as *ultra vires*. 'We are governed by our judges and not by our legislatures... It is our judges who formulate our public politics and our basic laws."

But what is the real basis of such laws? The real basis of these super-laws is the same as that of ordinary laws, *i.e.*, considerations of expediency. Every important principle developed in any judgment is a result of more or less definitely understood views of public policy. These judgments are indicative of the conscience of political society. "The process of constitutional interpretation compels the translation of policy into judgment, and the controlling conceptions of justice are their 'idealised political picture' of the existing social order." [2]

The court has been developing the constitution by coordinating the different branches of government, which were left poles apart by the Constitution. It has worked as 'the cement which has fixed firm the whole federal structure.' [3] It has increased their powers. The implied powers of the Congress and the President's powers of removal and equity have their source in the decisions of the Supreme Court. The court, on the other hand, has kept these two organs within their proper sphere; it has not allowed them to usurp the rights of the individual or to go out of the limits of their action. By reviewing the acts of the Congress and the actions of the President it has exercised a moderating influence over Congress

1. Bruce. The American Judge (New York, 1924), pp. 6—8
2. Encyclopaedia of Social Sciences, (1937), Vol. VIII, pp. 479-480.
3. Finer, Herman. Theory and Practice of Modern Government, (1932), p. 309.

and the President. It has worked as a balance wheel in the governmental machinery and the national government.

It has helped to strengthen the centre to a great extent against the federating states. In the case of McCulloch *v.* Maryland, the court upheld the supremacy of the Federation over the States. The facts of the case are as follows. The Congress by an act established a bank in the State of Maryland. The State imposed a tax on the notes issued by the bank, or any branch thereof. McCulloch, the cashier of the bank, refused to pay the tax. The case was brought before the Supreme Court by the State. Chief Justice Marshall decided that the Congress could establish a bank in the State of Maryland and the latter had no right to tax such a bank. There was no specific power in the constitution given to the Congress for establishing a bank. The recognition of implied powers of the Congress has led to the widening of the sphere of the activities of the Congress which has subsequently resulted in circumscribing the sphere of the activities of the states. Many of the functions, which the Congress and thereby the national government performs today would have been performed by the States.

Criticism. However, the Supreme court is criticised on many counts. Firstly, its method of arriving at decisions is said to be defective. It is pointed out that the decisions of the Supreme Court are in fact 'one-man' decisions because if five persons concur and four dissent, the decision of the former will be legal. But this criticism does not carry much weight. The basis of democracy is majority vote. There have been proposals to substitute two-thirds majority or some such other ratio for bare majority. The proposal has not been accepted until now. However, it may be well considered though the objection, then, will be that a minority will be given power of veto.

Secondly, the review of the congressional laws by the Supreme Court has shifted the authority from the Congress to the court. The Congress is under constant fear lest its laws should be declared *ultra vires*. There can be no vigorous policy on the part of the Congress. But has the purpose of giving this power of judicial review to the Supreme Court been fulfilled ?

We may say 'Yes' only in a limited sense. The liberties of the individual are no more secure and no less insecure in the United States than they are either in England or France. There are bills of rights and fourteen amendments protecting the rights and liberty of the individual. The Court has, rather, upheld the rights of property, it has defended the rich against the poor. The Court has made for a slow growth of national feeling by making the American people legal-minded and by making them rejoice in legal victories and majorities. Further this judicial review has led to irresponsibility in legislation, as the legislator relies upon the judge to remove its defects. "This irresponsibility is possibly more dangerous than the occasional vagaries of unconstitutional legislation."[1] This leads not

1. Brogan, D. W. The American Political System (1938), page 33.

only to bad legislation but also results in a large amount of good legislation being never attempted. The backwardness of America in social legislation is due to this fact. It not only decides the legality of laws before it but also the "advisability of legislation, its essential justice, its conformity to the rule of reason." [1] One fails to understand how a lawyer can be a better judge than a politician in such matters and how he can understand the needs of the people better than the politician. It is true that the judges can see every thing more calmly and scientifically, but the result is all guess work, which may be right at one point and wrong at another. In the case of Lochner *v.* New York, the Supreme Court vetoed the bakeries legislation and thus acted against the wishes of the people of New York. Again the Courts have not always been impartial and above political considerations in reaching their judgments. The judicial opinions, as delivered by the court, are both judicial and political.

The result of all this is that "the American political system is soaked in law, in lawyer's ideas and in the habits of mind bred by attention to the kind of thinking that legal training fosters." [2] Further the system has made American judges politicians and forced politicians to think of judiciary as a part of a political system.

Conclusion. With all these drawbacks, the American judicial system has worked well. The judicial review of the Supreme Court has not been used so frequently as could have been expected. Up to 1935, the Supreme Court has vetoed merely sixty laws passed by the Congress. Again, it never passes judgment directly upon legality or illegality, constitutionality or unconstitutionality of laws either of the Congress or State legislatures unless cases are actually brought before it. Political considerations might have influenced the decisions of the court but the judges have never been influenced by such considerations for their personal gain. On the whole, the Supreme Court has provided a machinery needed most for the success of the federal government in America. The Supreme Court has had able and intelligent personalities, like Marshall, Story, Holmes, and Stone.

Besides the federal judiciary, *i. e.*, the Supreme Court, the Circuit Courts and the District Courts, certain other special tribunals are also created by the Congress. The Congress is the sole authority in determining their constitution, procedure, jurisdiction salaries of the judges and their tenure. There are two such special important courts :

1. The Court of Customs and Patent Appeals.
2. The Court of Claims.

1. **Court of Customs and Patent Appeals.** This was created in 1909. This consists of five judges, who are appointed

1. Brogan, D. W. The American Political System, page 22.
2. Ibid, page 35.

by the President and the Senate. They hear appeals from the rulings made by the Customs Court of the United States, while administering tariff laws; and from the orders of the Commissioner of Patents while administering the law of patents. The decisions of this court are final in most of the cases. In certain matters of exceptional importance the jurisdiction may be assumed by the Supreme Court.

2. **The Court of Claims** This was created in 1855. It consists of five judges. They are appointed by the President and the Senate. They serve during "good behavior." The jurisdiction of this court extends to claims, arising out of contracts, against rhe United States. Cases can be brought before it either by individuals or by any executive department of the United States, or by the Congress.

In some cases, their decisions are final, but appeals may be taken to the Supreme Court. In other cases. they act merely as an investigating committee and report their findings to the Congress or an administrative department. These are thus merely administrative courts.

QUESTIONS AND TOPICS

1. Describe the judicial powers of the Federal Government.
2. Describe the organisation and the jurisdiction of the federal judiciary.
3. Describe the organisation, procedure and jurisdiction of the Supreme Court.

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CHAPTER 27

POLITICAL PARTIES

There are two major political parties—Democratic and Republican—in America. In recent years there have come into existence some half a dozen minor political parties in addition to the two older parties.

History. The history of the development of American political parties may be divided into the following stages: 1789–1832, 1832—1860, 1860—1884, 1884 to date.

1789–1832. We can trace the origin of the American political paries in the Constitutional Convention itself. There were two parties, one in favour of a strong centre and the other in favour of a restricted and a weak centre. The former were known as Federalists and the latter Anti-Federalists. Later on, when the constitution began to work, these groups organised themselves under two leaders, Hamilton and Jefferson, respectively Those organised under Hamilton were known as Federalists, those under Jefferson as Democrats. Hamilton was followed by the creators of the constitution, the capitalists, commercial classes, bankers, shipbuilders, and aristocrats. They all supported Hamilton's fiscal policy. Their strength was mainly in North Atlantic coast districts, Jefferson's party *i e.* the democratic, consisted of small traders, mechanics, agriculturists, planters, etc. Their strength was mainly in southern districts. Thus the division of parties was based on economic interests. In the sphere of foreign policy the Federalists favoured friendship with England as the latter was a commercial country. The Democrats, on the other hand, favoured an alliance with France. The Federalists favoured a strong centre while the Democrats were in favour of a weak and limited central government.

From 1789 to 1800, the Federalists were in power. Washington was a strong President and so was John Adams. They captured all the three branches of the government—the Senate, the House, and the Presidency. But their control soon dwindled partly due to party factions and partly to aristocratic and capitalistic element in the party and partly to their policy in enforcing certain laws, like Alien and Sedition Acts, which interfered with individual liberty.

In 1801, Jefferson, the leader of the Democratic Party, was elected President. During first sixteen years of its supremacy the democratic party, exercised power unopposed. The reason of the success of the Democratic Party lay in the fact that the party adopted a conciliatory attitude towards capitalists and industrialists. The Federalists were dwindling and by 1816 they either practically disappeared or were merged in the Democratic Party. Thus during this period up to 1816,

there were no cardinal differences in the programmes and affiliations of the two parties. When one party comes into office it follows the same policy which its predecessors had been following and which they condemned while they were outside the government.

From 1816 to 1828, there were no organised parties. This period is known as the era of good feeling and of personal politics. People gathered around different personalities like Adams, Clay, Calhoun and DeWitt Clinton of New York. In 1824, Adams was elected President as a result of a combination of a few groups. This combination of few groups came to be known as *National Republican* Party. In their opposition, other groups combined under the leadership of Jackson and called themselves *Democratic-Republicans*. In 1826, a third party, known as *Anti-Masonic* Party, also appeared. It was a short lived party and after an existence of a few years it disappeared.

1832—1860. In 1828, Jackson was elected President and remained in office up to 1836 when his nominee (Van Buren) was elected. Thus the Democratic-Republicans, or the Democrats as they have been termed, were in office continuously for a long time and remained in office for nearly sixty years except with two intervals. The National Republicans were in opposition. They resumed the name of 'Whigs.' Thus there were now two parties, 'Democratic' and the 'Whig.' The Democratic Party was well organised and efficiently controlled. The Whig Party was composed of heterogeneous elements—(1) National Republicans, (2) Kullifires, (3) Anti-masons, (4) Dissentients from Jackson's party, etc.

The main lines of division between the two parties were: (1) Democrats favoured improvement of roads, rivers, and canals, while the Whigs opposed it. (2) The Whigs favoured the United States Bank, while the democrats opposed it. The watchwords of Democrats were "liberty, equality and fraternity."

Up to 1854, these parties continued, after which period both the Whig and the Democratic Parties disappeared. The most important question involved during this period was that of slavery. The Whigs passed a law, Fugitive Slave Law, which declared that slavery was essential. As a result there was friction in the party and slowly it dwindled away. The Democrats, on the other hand were denying 'liberty, equality and fraternity,' and the assertion of self-determination to the black races and consequently hundreds of Democrats who were in favour of abolition of slavery opposed the party.

1860—1884. This led to the emergence of a new party—Republican, as a result of the combination of some Whig elements and the Dissentient Democrats. The growth of this party was helped by two other factors. The party advocated a free homestead policy for the benefit of amall farmers and wage-earners of the North, and favoured the tariff policy in favour of manufacturing interests. Thus the Republican Party

had its hold in the Northern and Eastern States. The result was that a republican candidate was elected in 1860, and their supremacy continued upto 1884. In 1864, President Lincoln was re-elected. The programme of the party included the maintenance of the union, the suppression of rebellion, which had broken out then, and the supremacy of the constitution. During the civil war, the Democrats supported the Lincoln administration and in fact merged themselves in the Republican Party, thus losing their separate entity. The Republican Party was now called the Union Party. But by 1872, all the democrats left the Republican Party and hence the name Union Party was dropped and the old name, Republican, was adopted.

In 1872, two more parties, *i.e* , the Liberal Republicans and the Prohibition Party came into being. The former allied itself with the Democratic Party and soon disappeared. The Prohibition Party is still in being.

1884—1940. Since the civil war, the most important parties are (1) the Republican and the Democratic. This period is known as the period of rivalry between the two parties. For most of the period, the Republicans have been in office. The Democrats occupied the Presidency during 1885—89, 1893—97 and 1913—21 ; and for the rest of the period the Republicans were in office. President F. D. Roosevelt belongs to Democratic Party and has occupied office since 1933. The Republican Party has its hold over rural areas in the East, Middle west, and Pacific States, over the northern and western Negroes, over the imigrants of Teutonic origin, and in the districts in which great business and industrial interests are dominant. The Democratic Party has been strong chiefly in southern States, and in the great cities in the north and east which have the largest foreign born populations, especially of Catholic and Jewish faith and of Irish, Latin, and Slav races. Thus the Republicans are controlled more by industrial and commercial interests and the Democrats by agricultural and labour interests. Their programmes are also determined mostly by these interests.

Programmes : Republican Party. The programme of the Republican Party as laid down in the 1936 platform is as follows : It endorsed the Kellog-Briand Pact. It refused to join the League of Nations and the World Court, but favoured co-operation in the humanitarian technical work carried on by the League of Nations. In commercial relations, it favoured the most-favoured-nation principle. It desires to keep an adequate national defence but at the same time was in favour of limitation of armaments and control of traffic in arms, if other nations agree. In domestic policy, it advocated the tariff for the protection of manufacturers and labourers and demanded the repeal of the Reciprocal Trade Agreement Law. It opposed Roosevelt's Reorganisation Scheme of the Supreme Court and defended the independence and integrity of the latter. It favoured relief to the local government. It desired to protect the rights of industry and labour and agriculture by repealing all Federal laws which hinder their prosperity. It advocated the protection of full rights of labour and old age security on a

pay-as-you-go basis. It was opposed to the Federal Tax System and postulated sound currency and tariff policy, a balanced budget and co-operation with other countries to stabilize currency throughout the world.

The most important leaders of the party are Mr. Wilkie, (Presidential candidate in 1940) ; Alfred M. Landon, John D. Hamilton, Charles L. McNary and Joseph W. Martin.

Democratic Party. Its programme as laid down in 1936 platform, is as follows. It advocated the non-interference in the affairs of other nations and adherence to Munroe Doctrine. It believed in "good neighbour" policy ; but at the same time it favoured a strong defence for America. It suggested arbitration as a means of deciding international disputes It did not favour the cancellation of debts owed to the U. S. A., by foreign nations. It desired America to join the League of Nations and the World Court. But due to opposition and the defeat of a bill to join World Court in 1935 it had to give up the idea. In domestic policy, it defended the Reciprocal Trade Treaties. It proposes the handling of unemployment problem on national basis. It is opposed to monopolization and the concentration of power. It defended the rights of labour, old age and social security insurance. It approved of the electrification of rural areas and provision of cheap power. It supported and promised to help the farmers and to mitigate farm tenancy. It promised an immediate extension of the merit system and a reduction in the expenses of the government. It was in favour of stabilization of currency.

The most important leaders of the party are: Franklin D. Roosevelt (President of the U. S. A.), John N. Garner, James A. Farley, W. Barkley, William B. Bankhead and Sam Rayburn

Besides these two parties, there have come into existence a few more parties—People's Party, Socialist Party, Farmer-Labour Party, LaFollette Progressive Party.

1. **People's Party.** This party advocates state ownership of rail roads, telephones, telegraphs, and postal savings banks. It advocates graduated income tax, the regulation of currency by the state instead of by the bank ; and favours unlimited coinage of silver at the ratio of sixteen to one.

2. **Socialist Party** This party came into being in 1897. It advocates social ownership and democratic control of industries and socialisation of the credit and currency system. It is in favour of proportional representation and direct election of the President and the Vice-President. It desires to increase the powers of the Congress and the removal of judicial review of the Supreme Court. This party is not very popular. It has never polled more than one million votes.

3. **Farmer-Labour Party.** This party was created in 1920. It was organised by certain labour and liberal leaders. But it could not achieve any success. Its candidates for Presidentship in 1920 polled less than three lakhs of votes.

4. La-Follette Progressive Party. In 1924, the state of Wisconsin, proposed M. La-Follette, as a candidate for Presidentship and a group arose around M. La-Follette. This group of personal followers of LaFollette is called the LaFollette Progressive Party.

Relative Strength of the Parties in the Congress. No party has held a majority in the house for more than twelve consecutive years except once when the republicans continued as a majority party for sixteen years continuously. The average duration of majority of a political party in the house has been eight years in the case of Democrats. The present strength of the parties in the house according to 1938 elections is as follows :—

Republican	...	...	160
Democratic	...	...	261
Progressive	...	...	2
Farmer-Labour	...	...	1
American Labour	..	...	1
Vacancy	...	...	1
Total	...	...	425

In the Senate, their representation is as follows :—

Republican	...	...	23
Democratic	...	...	69
Farmer-Labour	...	...	2
Progressive	...	...	1
Independent	...	...	1
Total	...	...	96

Characteristics of Party System in America. In America there is a two-party system ; other political parties have little influence and meagre representation in the Congress. But this does not mean that the two parties are conservatives and liberals as they are in England. Each party has a conservative and a liberal wing. President Theodore Roosevelt, (a Republican), President Wilson and Franklin D. Roosevelt (both Democrats) have been equally liberal. The Democratic Party favoured slavery while the Republicans opposed and fought it ; and we call the Democratic party liberal and the Republican conservative. So we can not say definitely that one is conservative and the other is liberal. Both have mixed elements.

The American political parties are not divided so much on economic lines as the English parties are. No party has got radical changes to be brought about in the society as Labour Party in England has. This is due to the general prosperity of America and the opportunity which every one gets.

Nor are the policies of these parties vrey vigorous and far reaching. Different political parties follow almost the same policies which their predecessors had been following. Jefferson's party followed a conciliatory policy towards commercial and industrial interests, who were the main supporters of the rural

party, the Federalists. The Democratic Party in 1850 followed a policy quite reverse to what they were advocating while in opposition and which their opponents were following. This has led Professor Finer to remark that "America has only one party, the Republican-*cum*-Democratic, divided into two nearly equal halves by habit, the contest for office, the Republican being one-half and the Democratic the other half of the party." The reason for this state of affairs is not far to seek. The field of action and reform in America has been restricted to a great extent. The national government has very few subjects to deal with. Most of these subjects are such that a common politician can not understand due to their technicalities and niceties. The problems which may lead to differences of opinion are only few. Then the Supreme Court is there and the fear of unconstitutionality prevents parties and politicians to embark upon new adventures. Other matters like suffrage, which have led to so much controversy and party changes in other countries, have already been decided and laid down in the constitution.

There is no continuity in the development of political parties in America. Every decade has seen the disappearance of existing parties and the rise of new ones. The reason is that the U. S A., is a vast and a huge country. There can not be any uniformity in problems. No one party can handle all the matters arising in such a vast country. The problems and needs create their own upholders and opposers. However, since the civil war there have been mainly two major parties.

Parties in the U. S. A., are not so much divided on fundamentals or basic principles as in England. We have seen the programmes of the two major parties. They differ only in details and not in principles. In foreign policy both believe in aloofness of America from European affairs; in defence both have the same principles; in domestic policy both believe in tariffs, though one in higher and the other in the lower; and in commerce and trade, their policies are nearly the same. Therefore, parties revolve round personalities, who happen to be at the helm of affairs. The real parties are organised only at election times. The main function of parties in America is to occupy as many seats in the Congress as possible and to share patronage.

However, with all the defects which the American party system possesses, it has helped a great deal to make the American national government a success. It has homologated the Congress and the President. According to the scheme laid down in the constitution, the Congress feels that its prestige lies in opposing the President. The party system has led to the removal of this defect to a great extent and has brought both the instruments of the federal government together.

Acc. No.

QUESTIONS AND TOPICS

1. Describe the chief features of the party system in the U. S. A.

2. Compare and contrast the party system of the U. S. A. with that of England or France.

3. Compare and contrast the programmes of the Democratic Party with that of the Labour Party in England.

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CHAPTER 28.

THE GOVERNMENT OF CANADA.

HISTORY OF THE CONSTITUTION.

Frenchmen began to settle in Canada in 1608 and thus it developed into a colony. The colony of Canada was governed by the French king as a province of France. Its administration was highly centralised and bureauratic. There was no representative body; the Governor was the supreme authority. Nothing could be done without his permission; not even a public meeting could be called without his previous permission. French civil and criminal laws were in force. The Governor of the colony was responsible to the king of France. Royal supervision was very stringent. Canada under France afforded the example of paternal absolutism. Its population consisted of priests, merchants and agriculturists.

Slowly, the provinces of Canada passed into the hands of the British—Nova Scotia in 1713 and Cape Breton in 1758.[1] This process was completed during the Seven Years' War, when the English conquered Quebec in 1759 and Montreal in 1760. Canada was thus placed under the rule of military commanders of the British army. They governed Canada up to 1763 when the Treaty of Paris was concluded. This period is known as the "Regime Militaire." This period is not very important from the point of view of the history of the Canadian constitution.

On 10th February 1763, ths Treaty of Paris was signed. The treaty provided that, "His Majesty on his part, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will, in consequence, give the most precise and most effectual orders; that his new Roman Catholic subjects may profess the ownership of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit."[2] Thus religious tolerance was granted to the Roman Catholics. The royal proclamation of October 7, 1763 established a civil government under British rule in Quebec It announced the appointment of a governor. Consequently a month later, Murray was appointed as the governor of Quebec. He was to be assisted by a council. Thus the executive powers were vested in the governor and his council. Provision was made for calling an assembly. The legislative powers were vested in the governor, the council, and this

1. Kennedy. The Constitution of Canada, 1534—1937. (1938), p. 25

2. Shortt and Doughty, Constitutional Documents, 2nd Ed., pt. II, p. 115.

assembly. They administered law and equity "as near as agreeable to the laws of England." Appeals in civil cases could be taken from these courts to the privy council.

The government, as envisaged in this proclamation continued until 1774. This period is one of constitutional uncertainty. The governor did not know his powers; the merchants did not know if they had been deceived; the *noblesse* did not know their rights; the Roman Catholic Church did not know its status; the habitants were encircled in a gloom of pathetic doubt. As for judicial system, it was an almost inexplicable tangle."[1] The administration was characterised by inefficiency and incompetency.

The result was dissatisfaction. Promises were made by the Home Government to reconsider the governmental machinery. With the efforts of Carlton, these promises culminated in the Quebec Act of 1774. This Act removed certain disabilities over Catholics. They could now enter the Assembly as the oath to be administered was changed. The Roman Catholic Church was given a legal status. The governmental machinery was nearly the same under the 1763 proclamation. The council of the Governor was increased from 12 to not more than 23 and not less than seventeen. He could choose a small inner council of five members to transact business, except legislation. This inner council came to be known as Privy Council. But on an appeal to His Majesty, this Privy Council was dissolved in 1779. However, the presence of at least five members for the transaction of executive business was essential.

The legislative powers were also vested in the council. The presence of half the members was essential for legislation. The powers of legislation were not wide. It could levy taxes for the purpose of public roads and buildings only. Matters touching religion were out of its competence.

The criminal law of England was to continue but the civil law of England was substituted by French civil law. The Governor of Canada could alter the law by issuing ordinances from time to time. Thus the system was not too rigid.

However, the American revolution had its repercussions on Canadian politics. The great influx of loyalists from the U. S. A., who were politically far more advanced than the Canadians, raised new questions of political rights. The financial position of Canada was not very sound. The repeal of the Quebec Act was asked for. Carlton, now Lord Dorchester, was reappointed as governor of Canada. He took up their cause and succeeded in getting the Constitutional Act of 1791 passed.

The Constitutional Act of 1791 divided Canada into two—Lower Canada and Upper Canada, and established separate representative institutions in the two Canadas. In both the

1. Kennedy: The Constitution of Canada, 1534—1937 (1937). p. 48.

Canadas, the executive head was the governor. He was to be assisted by a parliament consisting of two houses—the Legislative Council and the House of Assembly—in matters of legislation. In Upper Canada, the council was to consist of at least 7 members and in the Lower Canada of at least 15 members. The membership could be raised by royal direction. The members were to be nominated for life. The speaker of the council was appointed and could be removed by the governor. A provision was made to create a hereditary nobility for the council. Thus the council was intended to be a nominated and hereditary body.

The House of Assembly was to consist of 16 members in Upper Canada and 15 in Lower Canada. They were to be elected on wide franchise. No property qualifications were required of the members. Clergymen were ineligible for membership.

The tenure of provincial parliament was four years; but the governor could dissolve it earlier. The bills passed by the parliament were to be assented to by the governor. He could reserve a bill for royal assent. Any bill, assented to by the governor, could be revoked by the British Government any time within two years of its promulgation.

The governor and the Executive Council were the highest court of appeal. But an appeal could be taken to the Privy Council in England.

The legal status of the Roman Catholic Church was reconfirmed. Equality of religious freedom was ensured. The provincial parliament could legislate on religious matters. All such bills passed by the provincial legislatures were to be laid before the two houses of the British Parliament for at least thirty days, after which, with the assent of the king; they became law. If any house of parliament addressed the king to withhold his consent, he had to do so.

The executive was made independent of the legislature by the grant of Crown revenues and military grants.

This grant of representative institutions without any responsibility led to more discontent. Dissatisfaction was felt in both the Canadas—upper and lower. In lower Canada, the issue was more racial than political. The Quebec Act had recognised the separate entity of French-Canadians. They now became self-couscious of their uationality. They no longer could live under an English governor, English judges, English courts, and an English council. They were dominant in the Assembly. There were constant bickerings between the Council and the Assembly. The Council did not agree to the bills passed by the Assembly and the Assembly in its turn vetoed civil lists passed by the Council. However, the Assembly never concerned itself with political or constitutional questions. The problem was racial. It insisted on racial rights and privileges. The French demanded the control of revenues and appropriations, an elected council and French laws. This rising tide of nationalism found its expression in a rebellion led by

Papineau, the leader of the French and many a time the speaker of the Assembly. The rebellion was, however, quenched but the racial issues henceforth took a political and constitutional aspect.

In Upper Canada, the issue was political. A privileged class had dominated the administration ; the Church of England had secured a privileged position and above all a privileged social class had grown up. Thus the problem was to get rid of this privileged class and give liberty and freedom to all. This led to a demand for responsible government, so as to make the voice of the House of Assembly effective.

Besides these racial and political troubles in both the Canadas, there were certain general defects in the constitution which aggravated the situation. The crown exercised enormous and vast powers in the two Canadas. The executive was irresponsible. The Crown lands and Crown territorial revenues were a cause of constant friction. There was no popular control over the executive as the governor could depend upon these revenues. The legislative powers of the provincial parliaments and the Imperial Parliament overlapped. There was no clear definition or delimitation of their respective powers. The provincial legislature overstepped their sphere and went to such a length as to claim a right to amend their own constitutions. This led to friction between them and the Crown.

The Crown was not responsible to the House and the Assemblies and their concurrence in legislation was essential. The result was deadlocks. The governor dissolved the house too often. Though constitutionally he had the right to do so, he exercised it, unlike the king in England, in his own discretion. The governors depended more and more on legislative councils for support. They selected the members of their executive council from the legislative council and only such members who supported the administration were nominated to the legislative council. The position is well summed up by Lord Durham in his report : "Representative government coupled with an irresponsible executive ....constant collision between the branches of the government : the same abuse of the powers of the representative bodies, owing to the anomaly of their position, aided by the want of good municipal institutions, and the same constant interference of the imperial administration in matters which should be left wholly to the provincial governments."[1]

In 1838, Lord Durham was sent to Canada vested with wide powers to meet the situation. He studied the problem and presented a report to His Majesty. He recommended the ex-union of Canada, responsible cabinet government, and a thorough municipal government. The prerogatives of the Crown were to be preserved but the Crown had to submit to the necessary consequences of representative institutions.

1. " Durham Repotr" edited by Lucas (1912), Vol. II, p. 194.

He recommended a definite demarcation of legislative sphere of colonial and imperial parliaments in respect to Canada. In matters falling under the colonial jurisdiction, the executive was to be responsible to the Colonial parliament. He recommended an early enactment of a constitution act on these lines so that wrongs may be righted before it was too late.

The Parliament passed an act (23rd July, 1840), by which Lower and Upper Canadas were united. A Legislature consisting of the two houses, Council and Assembly, was established. The executive head was the governor. He could appoint his deputies to assist him in administration. The governor was made responsible on the usual lines and he was to exercise only those powers which were necessary for guiding colonists along prescribed lines.

This scheme resulted in establishing cabinet government responsible to the legislature. The position of the governor was reduced to that of a constitutional head like that of the crown. The Canadian legislature was given the right of regulating its own economic policy. But the constitution did not work very satisfactorily. The defect was that an attempt made to govern two distinct groups by a unitary system. The legislature was concerned not only with subjects of common importance but with all the subjects. The union was merely legislative. The expansion of agriculture in the west created new problems. Again lack of modern means of communications made little for the union of different parts of Canada. Centrifugal forces were in action. On the other hand, there was a need of common and united front. The maritime provinces were little known to the inhabitants of Canada. They also had to be united. Thus both centrifugal and centripetal forces were in operation. How they were to be adjusted ? The solution of this difficulty was hoped to be found in the federation. In America, civil war was going on and one form of federation was undergoing a test. Many proposals were made, different schemes were examined. Consequently, delegates from every part of Canada including maritime provinces gathered at Quebec on October 10, 1864. They passed 72 resolutions in less than 18 days. These resolutions were based on the principle of a Federal Union of British North America on 'principles just to the several provinces.' They had learned a lesson from the American Civil War and therefare, decided in favour of a strong centre ; the residuary powers were to remain with the central government.

The representatives of colonies including the premiers, went over to England and discussed the plan of the resolutions wi h Her Majesty's government. On the basis of these discussions a bill was framed and introduced in the British Parliament, and with little opposition, the British North America Act, 1867, was passed The Act created Canada as a Dominion and established a federation. The government established was an improvement over the scheme recommended by Lord Durham. The constitution as established under the Act of 1867, is the present working constitution.

However, since 1867, there have been far-reaching developments in the political history of the country. This period may be divided into two parts : 1867—1914 and 1914 to date. During the first period, full self-government was evolved and authority in commercial matters was established. It is characterised "by growing assurance, slowly developing self-confidence and that widening interest in economic affairs which belong to the life of a young nation rich in material possibilities" [1] The second period is notable for the development in the relationship of Canada with other countries of the British Commonwealth and particularly with the mother country on equal footing. After the passage of the Statute of Westminister 1931, the Dominion has come to be independent and autonomous. The position of Canada and its relations with the mother country after the passage of the Statute of Westminster, 1931 are discussed in the next Chapter.

QUESTIONS AND TOPICS

1. Describe briefly the growth of the constitution of Canada.

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CHAPTER 29.

DOMINION OF CANADA AND THE STATUTE OF WESTMINSTER, 1931.

The Statute of Westminster does not confer any new status on Canada or on any other dominion. Different dominions have acquired different status. It merely enacts the conventions into law and thus, recognising those already existing conventions, makes provisions for further growth. By the passage of the Statute and the events occurring since then, the dominions have become equal and independent states. The Balfour Declaration, on which the whole conception of the Statute of Westminster is based, reads: "They (the self-governing Dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or external affairs though united by a common allegiance to the crown, and freely associated as members of the British commonwealth of Nations" Further events have gone to a great length in establishing the sovereign character of the dominions in international law. However, there are certain limitations or restrictions, due to their long connection with the mother country and with each other or due to their own mutual self-interest which some writers think derogatory to the status of a full sovereign state in international law. But these restrictions are more of a constitutional than legal character. Otherwise, there is not much difference between the dominions and other members of the international community of nations. In the following pages, we shall examine the present status of the dominions with special reference to the Dominion of Canada.

To understand the actual status of the dominions we shall study the question in its three aspects :

1. external relations.
2. internal sovereignty,
3. *inter se* relations.

External Relations. In international law, a State is a "permanently organised political society, occupying a fixed territory, and enjoying within the borders of that territory freedom from control by any other state, so that it is able to be a responsible agent before the world."[1] Therefore what is required of a state to be a member of the international community is firstly, that it should possess a territory; secondly, that it should have a permanent political organisation so that to fulfil international obligations and secure their observance by member states and to be capable of demanding its own rights; and thirdly, it should be independent of any foreign control. If we apply these tests to the dominions, we can

1. Fenwick. International Law, (1934), p. 81.

not but identify the dominions with ndependent states. However, certain writers think dominions as protectorates and say that whatever status they enjoy in international sphere, they enjoy it because of the United Kingdom. This view does not hold ground in the light of the discussion of the position of sovereign states. So for removing such doubts we shall discuss their position in reference to their duties which they as members of an international community perform, *i.e.*—

(*i*) Membership of the League of Nations.
(*ii*) Receiving and accrediting ambassadors.
(*iii*) Negotiating and concluding treaties.
(*iv*) Recognising foreign states.
(*v*) Declaring of and participation in war.
(*vi*) Remaining neutral.

League of Nations. The dominions are equal members, with all the other member States of the League of Nations. In 1927, Canada was given representation on the League Council as a non-permanent member. Similarly the Irish Free State in 1930, Australia in 1933 and New Zealand in 1936, received independent representation. A dominion is not responsible for what is done by the representatives of the United Kingdom or those of any other dominion on the League Council.

In the labour organisation of the League the dominions have separate entity. and similarly they have separate status on the Permanent Court of International Justice. However, there is one small point to be considered. Every party to a dispute is entitled to have its national as a judge on the Permanent Court of International Justice when the dispute is before that Court. The dominions may not the granted this right because an English judge is on the bench. So far no such case has arisen and therefore no clarity on this issue is available. But it is pointed out that on such occasions the British judge acts not as a representative of the United Kingdom but on behalf of the dominion. However, the demand of the dominions to have their own national as a judge on tbe court should be conceded.

In the conferences called by the labour organisation of the League. the representatives of a dominion act under the direct authority of the governor-general of the dominion. Regarding Conventions which are agreed upon between different countries, dominions have their own entity separate from the British Empire.

Receiving and Accrediting Ambassadors.[1] The dominions accredit their ambassadors, ministers and agents to foreign nations and receive from them in their own country exclusively on their own authority. In 1920, Canada proposed to send a minister plenipotentiary in charge of Canadian affairs at Washington, who in addition to his duties as representative

1. Keith, A. B. The Dominions as Sovereign States, (1938), pp. 579—583.

of Canada in the U. S. A., was also to perform the duties of the English ambassador in his absence. But this proposal was not accepted by other dominions and therefore, it had to be delayed. In 1924, the Irish Free State accredited her diplomatic representative to Washington and, later on, to Paris, Berlin and to the Vatican City. In 1931, arrangements were made to appoint a minister to Belgium and the office was to be combined with that of the Minister of France. In 1935, she sent an envoy to Spain. The dominion of Canada appointed ministers to Washington and Paris in 1926. Another minister has been appointed to Tokyo. In their turn, the U. S. A., France and Japan have sent their ministers to Ottawa. Similarly the Union of South Africa has accredited to and received from other countries such ministers and envoys. The letter of credence to such ministers is granted by the king on the advice of the ministry of the Dominion concerned either through the Foreign Secretary or through the Ministry of External Affairs as in the case of the Irish Free State and the Union of South Africa. The representatives of other states are received by the Governors-General of the dominions, as representatives of the king. The ministers accredited to these dominions enjoy the same immunities as are enjoyed by such ministers in England.

The dominion ministers in other countries consult the British representatives in every matter. It is so because of the great weight of Britain in diplomatic politics and it is no easy job to be successful in international politics by remaining aloof.

In cases where the dominions do not appoint their own ministers, they employ the British embassy to represent them. In such cases the British representative acts not as a representative of England but on behalf of the dominion appointing him.

Negotiating and Concluding Treaties. The dominions negotiate and conclude treaties on their own responsibility. Where they have their own representatives, they negotiate through them. Where they do not have such representatives, they employ British ministers. The treaties are concluded in the name of the king, and the Seal of the Realm is used except in case of the Irish Free State and the Union of South Africa, where their own seals are employed. Canada uses the Seal of the Realm.

In minor matters, the representatives of the dominions may conclude governmental treaties with other states directly without the king's signature.

In other treaties, the dominions sign and ratify treaties individually. Even where the Empire acts as a unit, the representatives of the dominions sign treaties separately, and they are duly ratified.

In matters of trade, the dominions negotiate with other countries through special envoys and Trade Commissioners. Similarly, they receive consuls from other countries.

However, there is one limitation. The dominions are required to inform other members of the Commonwealth before carrying on negotiations with other countries. This is due to the fact that the Commonwealth may be able to offer a united front to other nations. There is no agency to enforce it but its observance depends upon mutual understanding.

Recognising Foreign States. In 1924, the Labour Government of England recognised the Soviet Government without consulting the dominions. The Prime Minister of Canada asserted the right of Canada to recognise a state separately and hence a separate recognition was accorded and a separate trade delegation received. In 1927, the British government broke its relations with Russia and Canada followed suit. But in 1929, when the British government again accorded recognition, the Dominions remained aloof.

In 1937 an interesting situation might have arisen had the efforts of Mr. Cosgrave been successful in inducing Mr. De Valera to recognise *de jure* the insurgent government of Spain, as Great Britain and other dominions were opposed to such recognition.

However, recognition granted by the British Government does not lead to automatic recognition by the dominions; and similarly, recognition by any dominion does not mean recognition by any other dominion or by the British Government.

Declaration of War. Have the dominions the right to declare war? Here the position is complex. The Dominion of Canada and the other dominions as well do not possess the right to declare war. In fact, nor they desire to have it. In 1936, Canada asserted the right to send ambassadors and ministers but not the right to declare war. It was referred to in the debates and it was proposed that the consent of the Federal Parliament and the provinces be taken before a declaration of war is made. It was suggested that a general election be held before making such a declaration. But no specific decision was arrived at and the matter was left as it was. Similarly, Irish Free State has not asserted this claim as yet. It is generally asserted that the dominions are at war as soon as the Crown is at war. But there are certain occasions when the British Crown may be at war, as in the Afghan War of 1919, and the dominions may not be. Again, Britain has certain exclusive obligations to France, Belgium, Iraq and Egypt, but they may not involve the dominions if the British Crown is at war on their account.

Again, when the present war was declared Canada was at peace for at least three days after the British Crown had been at war. Similarly after England had declared war. Union of South Africa was at peace for a long time.

So far there has been no occasion when a dominion had to declare war against any country. The position on this aspect of the question is not very clear. Only subsequent events can provide an answer.

Neutrality. A natural corollary to the right to declare war is the right to remain neutral. Can a dominion remain neutral while the United Kingdom, and for that reason the British Empire, and the other dominions are at war? The long-held view is that a dominion can not remain neutral because it would mean a revolt and a right to secede. But in the present war, Ireland has declared her neutrality and is sticking to that. This means that the dominions have a right to remain neutral. However, Canada has never demanded this right so far.

Conclusion. Thus all these facts lead us to conclude that the dominions possess all the marks of a full sovereign state. They enjoy the same status as is enjoyed by other big states like France, Italy, Spain, Germany and the U. S. A. Each dominion is responsible for her own acts and is not responsible for the commitments of other dominions or those of the United Kingdom. Whatever limitations there are they are due to their mutual understanding and also because they wish to retain them. Moreover, the old conception of sovereignty as one and indivisible is no more adhered to. The political and economic inte-dependence among the dominions has been well accepted. In the light of all these facts we can say that the dominions are full sovereign states in International Law.

Iternal Sovereignty. The dominionsare internally in dependent and sovereign. The legislative, executive and judicial powers are exercised by the crown of a dominion concerned on the advice and with the help of the legislature, ministers and judicial courts of the dominion. In Canada, all the three functions are performed by the Canadian crown on the advice of the Canadian cabinet and with the help of Canadian courts. The crown is represented by the Governor-General, who is appointed by the crown on the advice of the Canadian ministry. The judges are appointed by the cabinet and can be removed only on an address presented to the crown by the legislature. Thus the dominions are free from any control by the British Government. However, there are certain minor limitations on dominion's internal sovereignty similar to those observed in foriegn relations.

Before the passage of the Statue the British Government exercised control over the dominions through three agencies: 1. the Crown, 2. the parliament and, 3. the army. The Crown appointed the Governor General, had the right to hear appeals from the Dominion courts and exercised the right of mercy, and conferred honours. The parliament could pass legislation applicable to the dominions, it alone could amend their contitutions. Merchant shipping was regulated by rules of the Imperial Parliament, and it had exclusive admiralty jurisdiction even in the territorial waters of the dominions. The dominion parliaments could not pass laws repugnant to the British laws applicable to the dominions, nor the laws of the dominions had any extra-territorial character. The laws passed by the dominion legislatures could be reserved for royal assent

which was given on the advice of the British cabinet. The dominions had no control over British forces in their territories. To understand the present position after the passage of the Statute, we shall take up these modes of control one by one and shall see how the Statute has changed the relations of the British Government and the dominions in these matters.

Governor-General. To-day, the Governor-General is selected by the crown on the sole advice of the dominion ministry, and the crown, as a constitutional head, is bound to accept such advice. In 1931, the Governor-General of Canada, Lord Bessborough, and in 1936, his successor Mr. John Buchan, were selected on the advice of the Canadian cabinet.

The Governor-General is liable to be removed by the king if the Dominion ministry so persists. In 1932, the king had to dismiss the Governor-General of the Irish Free State even against his wishes, because the Irish Government desired so. Thus the appointment and removal of the Governor-General are the exclusive functions of the Dominion Governments. "In neither case need the Imperial Government now be consulted nor need it be accorded any right to intervene."[1] The position of the Governor-General is that of a constitutional head.

Petitioning the Crown. This right of going to the footsteps of the throne is very old. It was by the Judicial Committee Acts of 1833 and 1844 that this right was given a statutory basis. Before the Imperial Conferences of 1926. 1929 and 1930, the Canadian legislature had passed a law prohibiting appeals from the Canadian courts to the Privy Council. But the latter declared this law *ultra vires.* The Imperial conferences did not take up the matter and therefore the Statute of Westminster also does not specifically deal with this matter. However, the dominions feel strongly on this matter. Consequently the Irish Free State has abolished appeals to the Privy Council altogether. In Canada also there is strong feeling against the decision of the Privy Council. In 1931, Mr St. Laurant, president of the Canadian Bar Association, speaking on this question declared : "There is no doubt a growing feeling in Canada that at least in ordinary disputes between parties, final decisions should be arrived at in our own courts ..... I have no doubt that some day ordinary clients will be content.....to accept their fate from our own Canadian courts."[2] Consequently in 1933, the Canadian legislature passed a law prohibiting appeals in criminal cases, and this act has been declared valid by the Privy Council. In civil cases, " if appeals continue, it is because Canada does not at present wish further to exercise its undoubted legal powers to abolish or to curtail them."[3] The only difficulty is that in taking such a step the Central Government and the provinces will have to act together which is not very easy in Canada. "As regards civil cases abolition to be really effective in Canada would require

1. Keith, A. B., p. cit. p. 65.
2 Quoted by Kennedy, W. P. M., "The Constitution of Canada 1534-1937," (1938), p 526.
3. Ibid. p. 526.

coincident action by the Provinces and the federation, which is improbable, but the right to abolish exists, and the appeal certainly is no longer a bar on the sovereignty of the dominions."[1]

Prerogative of Mercy. This prerogative is exercised by the Governor-General, on behalf of the king, on the advice of the dominion cabinet. The dominion legislatures have full powers to regulate the exercise of this prerogative of the crown.

Conferring of Honours This issue is a little complex. The conferring of honours is the exclusive prerogative of the crown. No dominion has passed any law touching on the subject. The honours conferred by the Crown have validity throughout the Empire. Nor this prerogative has passed to the Governor-General. In Canada, though the honours are conferred on the advice of the dominion ministry, yet the "responsibility for them lies on the cabinet of the United Kingdom, which advises the king in relation to a prerogative from which flow honours recognised throughout all the dominions and possessions of the Crown."[2]

However, this is not derogatory to the sovereignty of the dominion. The dominion legislature can pass a law prohibiting the use of such honours and titles within its territories and thus refuse to recognise them. It can even prohibit Canadians from using such honours abroad. It can create its own local honours which can be conferred by the Crown on the advice of the Canadian cabinet. There is no inferiority in this matter. Thus the control, which the British Government exercised through the Crown, has passed into the hands of the dominion governments.

Imperial Legislation. Section 4 of the Statute of Westminster provides: "No Act of Parliament of the United Kingdom passed after the commencement of this act shall extend or be deemed to extend, to a dominion as part of the law of that dominion, unless it is expressly declared in that act that that dominion has requested, and consented to, the enactment thereof." Thus it is on the request of the dominions that any act of the British Parliament will be applicable to them. But no dominion would like to request a foreign agency to make laws for it. Hence in matters of direct legislation the authority of the Imperial Parliament does not exist any more.

Laws Repugnant to "Imperial Legislation." Section 2 of the statute provides that "no law and no provision of any law made after the commencement of this act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such act and the powers of the Parliament of a Dominion shall

1. Keith, A. B. The Dominions as Sovereign States, 1938, p. 84.
2. Kennedy, W. P. M. p, cit. p, 496.

include the power to repeal or amend any such act, order, rule or regulation in so far as the same is part of the law of the dominion." Thus to-day no law passed by the federal or provincial governments of Canada is repugnant to any law of the Parliament of the United Kingdom. Therefore the domin ion parliaments have unlimited powers of legislation, subject to the restriction that the federal and provincial legislatures can not legislate on matters outside their respective province. In Canada the federal and provincial legislatures have acquired a right to repeal any existing or future law or act of the British Parliament applying to Canada. It was due to this section that an Act of Canadian federal legislature, prohibiting appeals in criminal cases to the Judicial Committee of the Privy Council, was held *intra vires* by the Privy Council in 1935, while a similar act was declared *ultra vires* in 1926.

Extra-Territorial Character of Dominion Laws. The dominion can pass legislation having extra-territorial operation. However, the position as to the extent to which such laws of Dominion parliaments have extra-territorial operation, differs in different dominions. The position in Canada is so well described by Professor Keith, that it deserves full quotation He says, "In the case of the Dominion of the Canada the Parliament in 1933 (C. 39), provided that every Act in force. enacted before the Statute of Westminster, which in terms or by necessary or reasonable implications was intended as to the whole or any part thereof, to have extra-territorial operation, shall be construed as if at the date of its enactment the Parliament of Canada then had full power to make laws having extra-territorial operation as provided by the statute." [1]

Merchant Shipping. Before the enactment of the statute shipping in the territorial waters of the dominions was regulated by Imperial legislation. The ships registered in the dominions and those engaged in the coastal trade were subject to the laws of the dominion concerned. This was believed to be derogatory to the dominion sovereignty and therefore, the Imperial Conference ot 1929 decided that full freedom of legislation for regulating shipping should be given to the dominions. Laws passed by one dominion in this respect do not have any extra-territorial jurisdiction over ships registered in other dominions, without their consent. However, the dominions can regulate coasting trade, sea fisheries and fishing industry in a manner they like. Custom duties may be levied or financial aid may be granted by a Dominion to ships, registered outside. In case of disputes the cases are dealt with by the dominion in which the ships are registered except when they are engaged in coastal trade of another dominion or are navigating in the territorial waters of other dominions. If disputes arise the dominion admiralty courts deal with them. Appeals can not be taken from the admiralty courts of a dominion which is dealing with the case to any other outside authority. To-day, the decisions of the Division court

1. Keith A. B., p. cit., p. 334.

in England have no legal effect in all the parts of the commonwealth. Each dominion determines the flag to be flown by ships registered therein. Thus a dominion can legislate for any and every ship navigating in the maritime belt of the dominion. These laws are no more subject to the approval of the Imperial Government.

Canada passed a Shipping Act in 1934 which replaced previous Canadian and Imperial Acts regulating shipping.

Admiralty Jurisdiction. The admiralty jurisdiction of the dominions was regulated by the *Colonial Courts of Admiralty Act*, 1890. The admiralty courts were created in the dominion with such jurisdiction as the High Court in England exercised. But the rules framed by these courts were to be approved by the King-in-Council and any clauses of such colonial measures were subject to reservation. Under the statute, the dominions can repeal any Imperial legislation and therefore, they are not subject to such restrictions now. Now neither the approval of the king nor the reservation and insertion of clauses of colonial measures are required. Thus the dominions have secured sovereign character in maritime matters. The same rules will apply to the British ships and those of other nations.

Reservation of Dominion Bills. The Governor-General could reserve a bill for the pleasure of the king. The king acted on the advice of the British government and therefore the latter could exercise a great influence over the dominion legislation. The matter was discussed in the 1929 conference and a decision was arrived at. The conference decided that the power of reservation by the Governor-General could be exercised only in accordance with the wishes of the Canadian ministry; secondly, the crown will not issue instructions to the Governor-General to reserve any bills, presented to him for his assent. In case of bills reserved, the signification of the king's pleasure will be exercised not on the advice of the British cabinet but in accordance with the wishes of the dominion ministry. These recommendations were accepted by the conference of 1930. The present position is based on these recommendations and Imperial Government does not exercise any power in this sphere.

Disallowance of Dominion Laws. Formerly, the king could disallow any Act of the dominions' parliaments within two years of the receipt of the Act, from the Governor-General. In the 1930 conference it was decided that the king could no longer exercise the power of disallowance in relation to federal legislation in Canada, and that the legal provision should be abolished by such changes in the Act as Canada would request.[1] But so far no such legislation has been passed. But in practice disallowance has become obsolete. Since 1873, no Act passed by the Canadian federal legislature has been disallowed.

1. **Kennedy, W. P. M.** The Constitution of Canada 1534—1937, (1938) p. 500.

Power of Amendment. In this matter the position is a little different. The Irish Free State, the Union of South Africa and the Commonwealth of Australia can amend their constitutions by their own acts, but Canada can not do so. For any repeal, amendment or alteration of the British North America Acts 1867—1930, the joint action of both the Imperial and dominion parliaments is necessary. This is due to the fact that the federal and provincial governments could not reach a common agreement as to the mode of change in the process of repeal, amendment or alteration of these Acts. But now plans are afoot to find out a new formula of amendment which may obviate the necessity of concurrence of the Imperial parliament and in this regard some progress has been made. In 1935, the House of Commons in Canada appointed a special committee to go into the matter. In December 1935, at a provincial conference, the subject was again discussed. On certain important points the federal government and the provinces have agreed. There are many proposals. Professor Kennedy[1], while giving evidence before the committee appointed by the House of Commons, proposed that the British North America Act be re-enacted as laws of Canada by the Canadian parliament. Then a special law may be enacted for their repeal, amendment or alteration. Certain sections of these Acts could be amended by federal action alone. others would be amended only when the provinces agree upon or ask the federal legislature to make such changes. Other sections may be changed through a special process. Any proposal to amend the Acts should be first passed by majority in the two houses of the Canadian parliament separately. If it is passed there, it may be referred to the provinces. If two-thirds of the provinces approve of the measure it would become law. This method of repealing, amending or altering these Acts may also be amended, repealed or altered through this very process. So a formula can be and in immediate future may be, found for avoiding imperial concurrence in this matter. In practice also the Canadian parliament has not requested the British Parliament since 1930 to pass any such act. New conventions have grown up as a result of which the acts have been moulded to suit the needs of the times.

Control of the British and Dominion Forces. The British Parliament has passed a law known as the Visiting Forces Act, 1933, authorising the exercise of control, as provided in the dominion legislation, over the dominion forces present in the United Kingdom. The act empowers the British authorities to help the officers incharge of the forces in dealing with deserters or other matters. Similar laws have been passed in Canada and the Union of South Africa. The dominions now exercise a similar control over the British forces present in the dominions and similarly help officers of such forces. Therefore it can be said now that the dominions have acquired equality of status with the mother country.

1. Kennedy, W. P.M., Op. cit., pp. 532-33.

Thus the control exercised by the Imperial Government through the crown, the parliament and the regulation of forces, has passed to the dominions themselves. To-day, they are in no way inferior to the British Government. All the disabilities imposed on their parliaments have been removed; they are free to legislate on any matter as they like. Hence, the dominions are internally sovereign states.

Inter se **Relations.** The dominions are internally and externally sovereign states. But their sovereign status is qualified by the fact of their being members of the British Commonwealth of Nations. To understand the position of the dominions in the commonwealth and to know how far their sovereign status has been qualified, we may discuss the question under four heads :

1. The common crown.
2. Inter-Imperial relations.
3. Inter-commonwealth relations.
4. Character of the commonwealth.

The Common Crown. The dominions owe allegiance to a common crown. The crown is a binding link between different units of the British Commonwealth It is held that the crown is indivisible and the dominions have no right to secede from the commonwealth. In fact the provision in the preamble to the statute that " they (members of the British Commonwealth) are united by a common allegiance to the Crown " was provided to ensure that the dominions have no right to secede. Nor is there any provision in the constitutions of the dominions empowering them to pass legislation to that effect. Therefore, if any dominion wishes to sever its connection with the commonwealth, the joint action of the dominion and the Imperial parliaments and the concurrence of other dominions is necessary. However, this position is open to question.

General Hertzog of South Africa maintained from the very beginning the right of the dominions to secede. To him the crown is not one but divisible. In 1934, the Status of the Union Act was passed in the Union of South Africa, which provides for the regulation of succession to the crown in the manner in which the succession to the crown of United Kingdom and Ireland is regulated. This is regulated by the Act of Settlement, 1701, the Union Acts of 1707 and 1800. But to-day there is no United Kingdom and Ireland as such but United Kingdom and Northern Ireland. Therefore the succession to the crown of the United Kingdom and Northern Ireland is regulated by the same laws by which the succession to the crown of the dominions is regulated and which laws are neither those of the United Kingdom and Northern Ireland nor those of the dominions. Therefore the purpose of the Union Act in the words of Keith, is " to make it clear that the Union has a sovereignty of its own, though the British line is to occupy the

throne pending further legislation."[1] There is no British crown that rules the dominions but it is the crown of the dominions which is at the head of their governments. The Union has got its own crown and Canada has got its Canadian crown. The dominion crown acts on the advice of the dominion cabinet and not on that of the British cabinet.

The divisibility of the crown is further exhibited by the events at the time of the abdication of King Edwards VIII in 1936. The statute provides that any change in the laws of succession to the throne or of royal style and titles would require the concurrence of the dominion parliaments as much as that of the British parliament. King Edward VIII signed his abdication instrument on December 10, 1936. No dominion legislature except that of the Commonwealth of Australia was in session. The parliament of Australia passed resolutions of confirmation on 11th December, 1936. Canada gave executive assent to the Imperial legislation and afterwards an Act was passed in the parliament. The Union government also assented to the Imperial legislation, " not as giving parliament any right to legislate for the Union but as approving in a spirit of benevolence the action which was being taken to remove a difficult situation."[2] After that the Union Parliament passed an Act —His Majesty King Edward VIII's Declaration of Abdication Act, 1937, on the lines of the Imperial legislation. But there was one difference. It affirmed the abdication from the time the king signed the abdication instrument *i. e.* on 10th December, while in England the abdication came into force only after the passage of the Abdication Act on 11th December. Thus King Edward VIII reigned in the Union of South Africa for one day less than in the United Kingdom. In Ireland, the succession of George VI to the throne was recognised only on 12th December. Thus King Edward VIII ruled for one day more in Ireland.

Again, the crown exercises different powers in different dominions. In Ireland the crown is eliminated from internal functions—legislative, executive and judicial, and it is used only for external relations such as accrediting and receiving of ambassadors and concluding treaties.

Therefore dominion status implies a secession on the will of the Dominions. In 1920 Mr Bonar Law remarked. 'If the self-governing dominions chose to say, "To-morrow we will no longer make part of the British Empire," we would not try to force them. Dominion home rule means the right to decide their own destinies.' Therefore, if any of the dominions wish to secede from the commonwealth, the British Government or any other dominion will certainly not employ armed force to check it. If they continue in the commonwealth it is because of their own wish.

Inter-Imperial Relations. It can be studied under two heads: nationality and supremacy of British parliament.

1. Keith, A. B., The Dominions as Sovereign States, (1938), p. 105.
2. Keith, A. B., Op. cit., p. 106.

Nationality. Common allegiance to the crown means common nationality. All nationals in the British commonwealth are British nationals. Before the passage of the Statute o Westminster, nationality was regulated by the British Nationality and Status of Aliens Acts, 1914 and 1918. But the statute confers over dominions the power of repealing any Imper legislation extending to them. Consequently Canada, Ireland and the Union of South Africa have passed legislation regulating the nationality of their people. Canada passed such legislation in 1932 and Ireland passed Irish Nationality and Status of Aliens Act in 1935. The Irish Nationality and Status of Aliens Act declares that the Irish nationals be considered as such only inside as well as outside the dominion. However, the position is not very easy. Whatever the legislation, double nationality still remains. The dominions can regulate their nationality within their own bounds as Ireland has done, but it is doubtful whether a double nationality will not be considered within the British commonwealth and other foreign countries. Moreover, such legislation can not prove of any benefit. All the benefits, which the nationals of different dominions at present enjoy as a result of their being British nationals, will no more be available if British nationality is eliminated. There will be practical difficulties as the dominions do not have their separate embassies in every country. At present, the British representatives can take up cudgels on behalf of the dominion nationals where they are maltreated. Therefore, these practical advantages have held back the dominions from taking any strong step in this direction and consequently, the issue has been left unsettled.

Supremacy of the Imperial Parliament. We have seen that the supremacy of the Imperial parliament over the dominion parliaments does not exist. But there are some remanent of the old supremacy,—firstly, in the case of nationality and secondly, in the case of powers of constitutional amendment. In the case of nationality, we have seen that such pawers exist more because of mutual benefits than from any other motive. In the case of powers of constitutional amendment the Imperial parliament does retain certain powers, particularly with reference to Canada. The Canadian Constitution can be altered only on the joint action of the Imperial parliament and the dominion parliament. But we have already discussed the proposals afoot to evade this necessity. Then some writers hold that the British parliament is a sovereign body and therefore, can undo any previous act of its own. Hence, it can abolish the Statute of Westminster and assume its earlier position. This is theoretically right. But the statute provides that any further act concerning the dominions can be passed only on the request and consent of the dominions themselves. This is not merely a clause of an Act of Parliament but a constitutional provision and the parliament ordinarily can not violate constitutional convention unless the public opinion is in favour of such an action. There is no such possibility of public opinion arising against the statute

or conversely in favour of repealing it. Again, even if it could, will it ever launch on such an attempt? We can not do better in this connection than to quote Mr. McGilligan who replying to a question in the Dail Eirean said, "We dealt with that question of the repeal of the statute in the discussions in the Imperial Conference, and in those discussions the act of renunciation with regard to America was on occasions referred to. General Hertzog on one occasion said that, if he was asked to face up to the theory that the legislative supremacy of the British parliament was always there and that by a legislative act it could to-morrow take over again the American colonies, he could afford to laugh at such a theory and could afford not to pay attention to it. Further, the statement was made by several delegates to the conference, and joined in by General Hortzog, that, if there was ever any question of a British parliament later repealing this Statute of Westminster which the dominions now wanted, the answer was that the moment that repeal was attempted, the whole commonwealth of nations would be broken up."

Inter-Commonwealth Relations. The question of Inter-commonwealth relations is of great importance and one is tempted to know how the relations among the different units of the commonwealth are regulated and how a unity of action is secured among them. We shall therefore proceed to discuss in the following lines how the relations among the different units of the commonwealth are regulated and how a unity of action is secured.

Relation and unity of Action. The British commonwealth of nations is no more a unity—a single unit of internat-ional law. The different units may combine and do certain things unanimously as they accepted the Optional Clause of the Statute of the Permanent Court of International Justice in 1929 or they may not.[1] At other times they may differ, as is borne out by the following examples. In 1930, all the units except the Union of South Africa accepted the General Act of 1928 for the Pacific Settlement of Incernational Disputes. The dominions declined to accept the Geneva Protocole of 1924.[2] Canada refused to accept the Convention of 1930 (for the provision of financial aid to a power victim of unjust aggression) prepared under the auspices of the League of Nations, although United Kingdom and the Irish Free State and the Union had approved of it. Thus the responsibility is not collective but individual. Each dominion is responsible for its own acts. There is no

1. Keith, A. B. The Dominions as Sovereign States, (1938), p. 127.

2. "Broadly speaking, it (the General Protocole) relied on establishing unescapable means of identifying the aggressor, mainly by applying the test above referred to (compulsory arbitration), and it applied the machinery of arbitration to all disputes except those arising out of matters solely within the domestic jurisdiction of one of the parties. Even in such cases, the Council or the Assembly might still consider the situation under Article 11 of the Covenant. The sanctions to be applied against the aggressor were identical with those laid down in Article 16 of the Covenant." ("A Short History of International Affairs 1920—1938" by Gathorn Hardy. [1938]

appeal against an action of a dominion either to the British Government or to another dominion. When a dispute is taken to the Permanent Court of International Justice at The Hague involving Canada as a party to the dispute, the case would be decided without involving the responsibility of the British government or of any other dominion. However, there is some amount of unity in treaties where the United Kingdom or for that reason any other dominion can secure advantages for the rest of the Empire, otherwise they conclude treaties individually.

Arbitration and Disputes. There is no permanent tribunal to deal with disputes between different dominions. In 1926, a common agreement was arrived at to refer disputes between governments *to ad hoc* tribunals, consisting of five members, who must belong to the commonwealth. However, this arrangement has not worked well. In 1932, when there was a dispute between Britan and the Irsh Free State over the passage of an act by the Irish Free State to withhold payments of certain land annuities, pensions to members of the Royal Irish Constabulary, former civil servants, etc., the British Government agreed to refer the case to such a tribunal. But the Irish Free State refused to join because the tribunal had no foreign element in its composition. Therefore there is a need of some permanent arrangement to deal with *inter-se* disputes as there is a great possibility of such disputes occurring frequently.

The basic point involved in the problem is that of the character of *inter se* relations. Are these relations international in nature or not ? The British view is that they are constitutional and not international, and this view was confirmed in the Imperial Conference of 1926. Therefore, they do not agree to refer *inter-se* disputes either to international tribunals or to tribunals containing foreign element. The view of the dominions, particularly that of the Irish Free State, is that they are international. It is on this basis that the Irish government refused to refer their dispute to an empire tribunal in 1932. The dominions have not pressed the point because they fear that the question of immigration and the treatment of immigrants may be raised by India or because they will not be able to enjoy such exclusive most-favoured-nation treatment as they are enjoying now. However, the Irish view should be accepted and international laws and standards should be applied to the disputes between the units of the commonwealth.

Character of the Commonwealth. We have seen that the British commonwealth is not a unit. What is it then ? Is it a federation, a confederation or merely an association ?

There have been many efforts to lay down the status of the commonwealth by different writers, but so far no unanimity has been reached. Commonwealth is certainly not a federation. There is not even a single mark of federation present in the commonwealth.

Nor is it a confederation. Some writers for long held this view. But to-day, these dominions are full sovereign states and have far-reaching powers in internal and external affairs. There

is no central authority which can make treaties without the concurrence of the Dominions. There is again the lack of 'the usual distinctive mark of a confederation, a system of agreements between tbe members which were, when made, treaties between sovereign or semi-sovereign states, and therefore of international character. The prevailing view, as we have seen, is still that inter-Imperial relations are not those of international law." [1]

Other writers have called it an alliance or a league. But it is neither an alliance nor a league. There is no specifically formulated alliance. The obligations of the dominions to one another are never put on paper.

The commonwealth is something more than merely a personal union. The different units try to follow a uniform policy in foreign affairs. Thev consult each other. The nationals have a common status. There is more cohesion among them than is found in a personal union. The cohesion differs from one dominion to the other. The Irish Free State and the Union have gone too far in establishing their independence and the commonwealth of Australia and New Zealand are still dependent on the British government. Canada occupies a middle position. Newfoundland is very much subject to the British parliament, so much so that even in financial and economic activities the dominion is guided by the British parliament. Due to this diversity of their position and status, it is impossible to assign to the commonwealth any definite status.

Conclusion. Thus we have seen that the dominions are sovereign states. If there are any limitations on their sovereignty they are partly because of their mutual agreements and advantages. Moreover, if humanity has to survive and the civilization to progress the old doctrine of sovereignty, *i.e.*, one and indivisible and absolute, will have to be given up and mutual cooperation and inter-dependence will have to be substituted in its place. They are free to secede from the commonwealth, if they so wish. The commonwealth exists because of sentiments or conventions. They are there because they wish to remain there. The dominions are no more colonies but nations. Summing up the position of Canada in the commonwealth, Professor Kennedy says, "One thing is certain, if obvious—the legal implications of Canada's place in the British commonwealth are strictly Canadian, in that they rest on Canadian public opinion; while changes may come, if desired solely and exclusively through Canadian action..... ....For better or worse, and outside the understanding even of wise men—Canada is a democracy.[2]

1. Kennedy, W. P. M. The Constitution of Canada 1534—1937 (1938) page 544.

2. Keith, A. B. The Dominions as Sovereign States, (1938), page 142.

QUESTIONS AND TOPICS.

"The relationship (among the units of the commonwealth) is wholly unlike that of a unified State; it is much less formal than that of a confederation, and much too nebulous to be styled an alliance."—Keith. Comment.

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7. Wheare: *The Statute of Westminster*, 1931, (1933).

CHAPTER 30.

NATURE OF THE CONSTITUTION.

The constitution of Canada consists of the British North America Act, 1867 and subsequent amendments. The British North America Act established federation with a strong centre in Canada. Since then there have been some changes and amendments. New practices and conventions have been established. To-day the constitution is quite different from what it was envisaged in the Act. The following are the chief features of the Canadian constitution.

Written. The British North America Act 1867 is a written document and so are the eleven subsequent amendments. But these Acts do not include the whole of the Canadian constitution. If by the Canadian Constitution is meant the public law which establishes the executive, legislative and judicial organs of the government—both federal and provincial—we have to look for them outside these Acts. The British North America Act did not touch upon the constitutions of the provinces except that it transferred certain legislative powers of the legislatures, then existing in provinces, to the federal legislature. We do not find any mention of any consitution of any province except two. The constitutions of seven provinces rest outside the Act. The constitution of British Columbia rests on an Order-in-Council of 1858 as amended in 1866 and 1871. Similarly the constitutions of Nova Scotia, New Brunswick and. Prince Edward Island are based on the exercise of the King's prerogative by the governors in 1748, 1773, 1784, which led to the establishment of legislatures and other institutions in those provinces.

The second element outside the British North America Act is the laws of the federal and provincial governments. For example, the House of Commons Act, passed by the federal government, provides that no person, holding an office under the crown, can be a member of the house and provides an exception which allows the members of the privy council or the cabinet to sit and vote in the house. Similarly, the Legislative Assembly Acts of the provinces make provision for the above in the provinces.

The third element is convention, usages, practices, and precedents. In theory the king can disallow the acts of federal government on the advice of British government, but the convention has been established that the power of disallowance will be used only on the advice of the Canadian ministry. The present relations of the Governor-General, as a constitutional head with the cabinet are nowhere written in the Act. He accepts the persons nominated by the prime minister as members of his cabinet. He accepts the advice of the cabinet whatever it is.

The fourth element is common law and particularly that part of it which deals with the prerogatives of the king. The British North America Act does not mention much about the executive authority of the federal government which to-day has come to occupy so important and overwhelming a position. It merely refers to the Governor-General but does not establish his office. The office of the Governor-General was created by Letters Patent, through the exercise of the king's prerogative, in 1878. The Act declares that the executive power shall be vested in the Queen and also that the command of the army and navy be vested in the Queen. It is nothing but declaratory of common law. The treaty making, declaring war and making peace are king's prerogative. To-day these have come to be exercised practically by the cabinet and not by the king.

Federation. The British North America Act established a federation in Canada. It united the scattered provinces. The form of the federation is not as that of the American federation. The scheme of government in Canada is cabinet government and not presidential as in America. This is based on the model of the British constitution. The Canadians have the same institutions with the same names as in England. The Governor-General is a constitutional head as the king is in England. He is assisted by a cabinet, responsible to the parliament as is the case in Great Britain. Thus the executive and the legislature are homologated, while in America they are two separate bodies and jealous of each other. The legislature is also based on the English model rather than on the American. The Senate of Canada was intended to be a conservative body like the House of Lords. Membership was either for life or hereditary. It did not give any equality to federating units as the American Senate provides ; the Canadian Senate is based on sectional representation. No special method of amendment of the constitution was provided as in America. The Canadian constitution could be amended by the British parliament in the same manner as the British North America Act, 1867, was passed. Besides these, there are certain constitutional differences between these two types of federation.

Residuary Powers. The residuary powers in Canada rest with the Central government, while in the U. S. A. they rest with the States. Besides the 29 heads in which the central government in Canada has exclusive powers, it can legislate for "the peace, order and good government" of Canada. This has tended to make the centre very strong—perhaps in no other federal constitution such a strong centre is provided for. However, this residuary power of the central government is restricted by a similar residuary power which the provinces possess. The provinces can legislate on matters of provincial and local importance, not mentioned in their exclusive list. Therefore one may say that there is completeness in the division of legislative powers in Canada. No residuary powers are left to the people of Canada as in America. The people of Canada cannot legislate through initiative and referendum, but in America they may. In Canada, it is beyond the powers of either the federal govern-

ment or the provinc to legislate through referendum or initiative.

However, the tendency in recent years has been to shift these vast powers to the provinces. The act has been so interpreted as to strengthen th e powers of the provinces as against the centre.

Relations between the Centre and the Provinces. The relations between the centre and the provinces in Canada may be studied under three heads :

(*i*) Appointment of governors.

(*ii*) Disallowance of provincial acts.

(*iii*) Subsidies and grant-in-aid to the provinces.

Appointment of Governors. In Canada, the governor-general appoints the governors of the provinces and can also remove them. This is a measure of great control by the central government over the provinces. No such control is exercised by the national government of the United States over the federated states. But this control has fallen in abeyance. There have been only two removals. The governors, after their appointment are as representatives of the crown as the governor-general is. Their position in the provinces is the same as that of the governor-general in the fed eral government.

Disallowance of Provincial Acts. The governor-general, on the advice of the federal ministry and particularly that of the minister for justice, can disallow any provincial Act within one year after it has been submitted by the governor of a province. Thus the governor-general and for that reason the federal government, has been given a revisory power over provincial legislation. In the United States this power belongs to the federal courts and particularly to the Supreme Court. In Canada, this power " was intended to cover the laws outside the legal review." [1] It was intended to cover such unjust and confiscatory legislation against which safeguards had been provided in the American constitution.

This power in the hands of the governor-general has resulted in a stringent control of the provinces by the central government. This power has been exercised in different modes during various periods, and has been supported on different considerations. For example, from the passage of the Act to 1893, the provincial Acts were disallowed on the grounds either of illegality and unconstitutionality of the Acts of the provincial egislature or of being contrary to reason and natural just ice. Still others were disallowed because they interfered with either the property rights of individuals or were in conflict with some dominion Acts. During this period the power was exercised very often.

During 1893—1918, different reasons were given to disallow provincial legislation. This period is the "golden-age"

1. Kennedy, W. P. M.: The Constitution of Canada 1534,—1937, (1938) p. 476.

for provinces because during this period their rights and powers have increased immensely. The principle during this period was that any provincial Act could not be disallowed because of its unreasonableness or injustice. Remedy for such defects should be sought in the electorate. No Act which was *intra-vires* of provincial legislature and which did not conflict with the dominion legislation could be disallowed. A provincial legislature in its sphere is sovereign and could legislate on any matter committed to it. No Acts could be censured by a court or by any other outside authority for reasons of hardship or injustice. Since 1918, the same view is held and the power of the federal government to disallow provincial Acts is seldom exercised. To-day, the provinces are units with a life and purpose of their own.

Subsidies and Grants-in-Aid to the Provinces. The distribution of sources of revenue between the federal government and the provinces made under the British North America Act was not equitable. The provinces were assigned such functions which they could not perform with their meagre finances. Therefore to meet this difficulty two remedies were tried. Firstly, permanent subsidies to the provinces from federal revenues were granted. Secondly, provision was made for casual grants-in-aids for specific purposes such as for education, highways and agriculture. Besides making it possible for the provinces to meet the demands made upon them due to their responsibilities, the system has resulted in a greater control of the provinces by the federal government. The grants-in-aids are made and measures are also prescribed as to the manner in which money is to be spent. For example, if money is granted for agriculture, it may be provided that a certain amount out of the grant should be spent on agricultural education. Again, if money is granted for technical education, it may be provided that the money should be spent on national schools only. Thus the federal government can control the policies of the provinces. Suspicion has arisen that "instead of taking away the rights of the provinces outright, they seem (seek ?) in some way to buy those rights by giving money to the provinces under certain conditions, which conditions, after all, involve the surrendering by the provinces of some of their rights and privileges." [1] Consequently, many efforts have been made to remove this evil. Attempt has been made to call the prime ministers of the provinces and the prime minister or another minister of the federal government in conference. They decide beforehand by mutual negotiations and adjustments as to how the money should be and would be spent. But this has not solved the problem to any great extent. In August, 1937, a Royal Commission on Dominion-Provincial Relations was appointed. It consisted of Hon. N. W. Rowell, Chief Justice of Ontario, Chairman ; Hon. Thibandeau Rinfret, Justice of the Supreme Court of Canada : R. A. Mackay, Professor of Government, Dalhousie University, Halifax ; Henry F. Augus, Professor

1. Mr. E. Lapointe in the House of Commons Debates, June, 1919. quoted by Dawson, R. M. in Constitutional Issues in Canada, 1900—1931, (1933).

of Economics, University of British Columbia, Vancouver, and John W. Dafoe, President of the *Winnipeg Free Fress.*[1] In the absence of Rowell and Rinfret due to ill-health Joseph Sirais of the Laval University and Alexendor Skelton of the Bank of Canada served as Chairman and Secretary to the commission respectively. The Commission described the situation in the following words: "The situation is so serious that conflicts of policy between dominion and provinces and between province and province have become a luxury which Canada can not afford. Fiscal policies which have profound effects on the magnitude and distribution of the national income must be in a single hand and responsibility for action or inaction must be assigned with unmistakable clarity." Therefore, the commission recommended certain proposals to be adopted by the federation. The commission recommends the surrender of direct taxation by the provinces in certain spheres and taking over by the centre responsibilities which are borne by the provinces. The commission suggests many other proposals to go into which will be out of place here. The recommendations have not yet been accepted due to the present war.

In America, there is no such problem. No grants-in-aids or subsidies are provided by the federal government to the states. On the other hand, the federal government has been assigned specific taxes and other sources of revenue by the constitution. There have been no such conflicts.

Judicial Interpretation of the Constitution. The final interpretation of the Canadian Constitution lies in the hands of the Judicial Committee of the Privy Council, an agency outside Canada. In America, on the other hand, the final interpretation of the constitution lies in the Supreme Court. It is the highest tribunal of the federal judicial system. The interpretation of the constitution in both the countries has been in the same direction, *i.e.*, bringing about a balance between the federal and provincial governments. In Canada, the centre was much stronger than the provinces while in America the states were stronger than the centre. In Canada, the tendency has been towards transference of power to the provinces while in America the tendency has been in the other direction. The result is that Canadian federal system has become increasingly decentralised and the American system increasingly unified, thus swinging back to normal positions.

Besides this likeness in the wo systems, there have developed other minor similarities. The conferences between the federal and the federating units' representatives have become frequent in both the countries. A new tendency is visible in both the countries toward national supervision and control in business and industrial activities. The responsibility in national defence, war and public debt has come to be entirely that of the federal government in both the countries. Apart from these similarities there has been little borrowing by Canada from the

1. *Foreign Affairs*, July 1940. F. W. Dafoe. "The Canadian. System Under Review."

American federation. The reason is to be found in historical and social conditions of both the countries. The constitution of Canada is evolutionary and that of America is revolutionary. Political institutions in Canada are a result of long history, while those of America were established by the fathers of the constitution influenced by the political ideas of Montesquieu and John Locke, with their theories of separation of powers and liberal government. However, Canada borrowed the idea of federalism from America and taking a lesson from the experience of America established a strong central government. What it further did was to establish federal-*cum*-cabinet government as opposed to the American presidential system. In the working of the two federations, there have come to be many like tendencies, as discussed above. But here also there has been not much borrowing because of reverse tendencies in both the countries—in one towards provinces and in the other towards the centre. The absence of any political parties in the sense of American political parties has further diminished the process of borrowing. To-day, the race of state rights in Canada and that of federal rights in America has practically run.

Amendment. The Canadian constitution can be amended only by the British Parliament on the request and with the consent of the dominion government. But there is a tendency towards eliminating this necessity of going to the British Parliament for amendment. Many proposals have been made but none has been accepted as yet.

QUESTIONS AND TOPICS.

1. What are the chief features of the Canadian constitution?
2. Compare and contrast the Canadian and American forms of federalism and estimate the success of each.
3. Write a short essay on the dominion-provincial relations.

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CHAPTER 31.

THE FEDERAL EXECUTIVE.

Governor-General. The executive power of the dominion of Canada is vested in the Canadian Crown. The Crown is represented in the federal government by a governor-general. The position of the governor-general is that of a constitutional head like that of the king in the British constitution. The governor-general is the representative of the Canadian crown and not a representative or an agent either of the British crown or of the British governnment. He no more takes his instructions from the British government nor reports about dominion affairs either to the British government or Colonial office. He has ceased to function as a diplomat or an agent of the British government or as an ambassador. To-day, the communication between the government of the dominion and the British government is direct, and not through the governor-general as before, though he is constantly kept informed as the king in England is informed about the business of the cabinet there. To-day, the powers of the governor-general are very few. They are exercised on the advice of the ministry. His position has shifted from that of a virtual dictator to that of a virtual impotent. The functions of the governor-general in political sphere are merely formal. They have come to be largely social, the chief exception being his duty to advice, to encourage, and to warn his ministry on any political matter.[1]

Appointment and Tenure. The governor-general is appointed by the king on the advice and approval of the Canadian ministry. He holds office during the king's pleasure, but generally, a term of five or six years is fixed. Thus he has come to be a Canadian and not a British official.

Salaries and allowances. The governor-general receives £ 10,000 per annum.

Powers. The powers of the governor-general are delegatory. His powers are given and limited by the Letters Patent, his Instructions and statutes. He cannot exercise directly those powers of the crown, which are not officially or legally granted to him. Generally the governor-general exercises the sollowing powers :

1. The governor-general is the Commander-in-chief of the dominion of Canada. He commands land, naval and air forces of the dominion.
2. The governor-general appoints judges, commissioners, justices of peace and other necessary officers.

1. Dawson, R. M. Constitutional Issues in Canada 1900—1931. (1933) p. 66.

3. The governor-general has the power of removing all officials.
4. The governor-general appoints the lieutenant-governors of provinces. But once they are appointed they function as direct representatives of the crown as the governor-general functions at the centre He can also remove these lieutenant-governors. This means a great control of the provincial governments by the Governor-general. But, in actual practice, the power has not been abused. There have been only two removals. Otherwise this power of removal has fallen into desuetude.
5. The governor-general selects, appoints and removes the members of the cabinet. But this power is only formal. The governor-general has to abide by the mandate of the electorate as to the selection of the prime minister. The leader of the majority party in the House of Commons is generally asked to form a government. In case he refuses, or when there is no clear majority of any party, the governor-general may exercise some influence. But such instances are very rare. After the selection of the prime minister, other members of the cabinet are selected by him and not by the governor-general. He has to appoint them only formally. The power of removal is seldom exercised. The governor-general never removes a minister or prime minister in his own discretion. It is the legislature and particularly the Commons that determines the fate of ministers.
6. The governor-general administers oath of office to all officials.
7. The governor-general exercises the prerogatives of the crown of reprieve and pardon. He can pardon or reprieve any person, and can remit fines, penalties or forfeitures, which may be imposed on such persons, who have committed an offence against the dominion of Canada. To exercise this prerogative, he has to consult either the privy council or a minister of the cabinet beforehand. In other cases affecting the interests of the British Empire or any other interests, the governor-general has to take such interests in his confidence before exercising reprieve or pardon. Thus this prerogative is also not absolute.
8. The governor-general summons, prorogues and dissolves the parliament (the House of Commons). But this power is, in fact, exercised by the cabinet. It is the cabinet that decides when the parliament is to meet and when it is to be prorogued. The parliament is never dissolved by the governor-general in his discretion before the expiry of its

full term. But a prime minister may demand a dissolution before the expiry of such a term, if he feels that the parliament does not represent the electorate. The governor-general, as a constitutional head, generally dissolves the parliament on sucha request

However, in 1926, the then governor-general (Lord Bying) refused to give such a dissolution. His action was very much criticised. The 1926 episode was as follows : In 1925, a general election was held. As a result of this election, no party got an overwhelming majority in the Commons. The strength of the two major parties *i. e.*. conservatives and liberals, was 116 and 101 respectively. The other major party was the Progressive Party with 24 members. The liberal ministry with Mr. Mackenzie King as prime minister, which was in power in the previous parliament, refused to resign before the parliament met. When parliament met the Liberal Party was sustained in office with progressive votes. The liberals carried on the government for six months. But after that period, a vote of censure on the government was moved in the house. Before the vote could be decided, the liberal prime minister, Mr. Mackenzie King, advised the governor-general to dissolve the parliament. The governor-general refused to do so. As a consequence, the liberal ministry resigned before the vote could be decided upon. The governor-general called upon Mr. Meighen to form a ministry. He formed an 'acting ministry', thus avoiding the trouble of by-elections for the members of the cabinet. This 'acting ministry' was defeated in the parliament after two days and a half. Mr. Meighen advised the governor-general to dissolve the parliament and he agreed. The election was held and the result was that the liberals got a clear majority in the Commons. This action of the governor-general of refusing a dissolution to one prime minister and granting it to another was very much resented and criticised. As a result the Imperial Conference of 1926 took this question into consideration and decided that the governor-general should act on the advice of the ministry. Since then the constitutional practice had been that the governor-general can not refuse a dissolution of parliament to the prime minister and thus he can no more exercise any discretion as he did in 1926.

9. The governor-general can reserve a federal bill for the significance of the crown. But this power, to-day, is of no importance. The pleasure or significance of the crown is exercised not on the advice of the British cabinet but on that of the Canadian cabinet. Thus the governor-general can exercise no substantial influence over the dominion legislation.

10. The governor-general can disallow any provincial law on the ground of illegality and unconstitutionality or injustice and hardship or in defence of property and private rights. This power provided a great control over provincial governments. To-day,

this power has lost its former importance and influence. The rights of the provinces have increased and their influence is being felt. The power of revision over their legislation has either lessened or has shifted to the courts. Whatever power now remains with the governor-general is exercised by him on the advice of the cabinet and particularly that of the minister for justice.

11. The governor-general appoints and receives such ordinary agents or ministers, who are not appointed or received by the crown or the king directly. The governor-general concludes certain minor treaties between Canada and other countries, which are not signed by the crown directly.

Thus the governor-general exercises executive, legislative, and judicial powers. At first sight these powers may seem enormous, but on close scrutiny, one finds them to be very formal without any real authority. They are either fallen into desuetude or are exercised on the advice of the Canadian cabinet. The governor-general has little discretion of his own. Even in the case of the prerogative of reprieve and pardon, which is an exclusive right of the chief executive, he has to consult the privy council, or the cabinet or any other interest involved. He does not exercise even that amount of influence which his prototype in England may. In practice the King of England does exercise some influence over the politics of the country and the functioning of the government. The MacDonald Ministry of 1932 was a result of the exercise of the King's personal influence, He influences the foreign policy of the country to a great extent. Nor has the governor-general any royal dignity and pomp around him. His functions have come to be chiefly social as those of the King of England, but that magnificence which hovers around a king, the governor-general does not enjoy. When the king is personally present in Canada he exercises all the functions personally and the governor-general recedes into the background. Thus his powers are merely delegatory.

The constitution provides for a Privy Council to help the Governor-General to carry on his duties. With the lapse of time, another institution, the cabinet, has grown up. To day, there are three bodies which really constitute the government in general and the executive in particular: the governor-general, the privy council and the cabinet. The governor-general has been discussed. It is now proposed to discuss the privy council and the cabinet.

The Privy Council. The Privy Council is a body which was intended to advise the governor-general and to assist him to carry on and supervise the administration of the dominion. The privy councillors are appointed by the governor-general and their number is variable. It always tends to increase. Once a person is appointed a privy councillor, he is always a privy councillor. Due to its large membership and the tendency to increase, secrecy and efficiency in the governmental machinery could not be maintained. Therefore, a new practice came to be

established. The governor-general began to select a small committee out of this large body and took them into his confidence. This small committee, later on known as the Cabinet, took precedence over the council and became a powerful body. To-day it is the cabinet and not the privy council that advises the governor-general. All the members of this cabinet are privy councillors, but all the privy councillors are not cabinet members. When the governor-general selects any person as a member of his cabinet that person is also made a privy councillor.

The Cabinet. The cabinet consists of a small number of most important leaders of a party in majority in the Legislature. It may be defined as a committee of the legislature and to be precise, of the party or combination of parties which can command majority in the lower house of legislature—the House of Commons. It is no more a committee of the privy council, to whom the governor-general may entrust the direction of the executive and the power of the state. But it is a committee of the legislature except that neither a precise method of selection is prescribed, nor the articles of delegation of power are definitely and clearly described.

The cabinet is a link between the legislature and the executive. It homologates and co-relates each other. The members of the cabinet are heads of different departments and carry on the administration. This body initiates and formulates the policy of the government. It explains to cajoles and urges the parliament to adopt its suggestions and measures. It makes almost all laws. It raises all the revenues and provides for appropriations, It is responsible to the parliament for all its acts of omission and commission. It sees that its policy is properly and efficiently executed. The blame or praise will attach exclusively to this body. This body is the real government of the country. It is the most powerful branch of the governmental machinery of the country.

The Prime Minister. The first stage in the formation of the cabinet is the selection of a prime minister. In theory, the prime minister is selected and nominated by the governor-general. But in practice, the governor-general does not possess much discretion to exercise. He is bound to call the leader of the majority party in the House of Commons and to request him to form his cabinet. The leader of the party is selected by the party itself. The governor-general is presented with a *fait accompli.* When a cabinet resigns, the governor-general is left with no alternative but to ask the leader of the opposition to form the government. In case no party holds a majority in the house, he has to call the leader of the largest party. There may be some occasion for the exercise of his discretion when there is neither a majority party, nor a single largest party ready to form the government or when the strength of different parties is very much evenly distributed. But such cases are rare and there has been no such case during recent years. The governor-general is in fact the appointee of the cabinet and he does not enjoy that freedom and discretion in relation to the cabinet as the king in England can hope to enjoy.

The prime minister is the most important figure in the government. He is the most powerful personality. He is the keystone around which the cabinet arch moves. He is its creator, preserver and destroyer. He can threat, cajole and persuade the cabinet. He may ask a minister to leave the cabinet. In 1902, the prime minister, Sir Willard Laurier, asked the then minister of public works, Mr. Tarte, to resign because the latter had expressed his opinion in favour of making certain changes in the tariffs, while the cabinet was opposed to such changes. Consequently, he had to resign. The cabinet takes its complexion from what the prime minister does in its discretion and what he is. The premier is really a despot. He gets done what he wishes. However, it is influenced by other members of the cabinet. Every decision is arrived at by mutual discussion and agreement. The responsibility is not exclusively his but that of the whole cabinet. But "still, controlling an enormous patronage, able to influence the fortunes almost of every legislation in his following, concentrating in his hands executive and legislative power, the premier exercises a real authority, which is greater than that of the President of the United States or any modern king."[1] His success depends upon his ability to manage the House of Commons and the public outside. He must have the capability of an American boss. Thus the prime minister's office "combines the peculiar advantage of the Premiership as it exists in Great Britain with many of the powers of the American boss."[2] Thus he is like an absolute monarch in the country, except with the difference that, while responsibility in case of a king is exclusively his, that in case of a premier is very much lessened as the cabinet as a whole is responsible and not he alone.

Functions of the Prime Minister.[3] The most important functions of the prime minister are as follows:—

1. A meeting of a committee of the privy council is held at the call of the prime minister and, in his absence, of that of the senior privy councillor, if the President of the Council be absent.

2. The quorum of the council being four, no submission, for approval to the governor-general, can be made with a less number than the quorum.

3. A minister cannot make recommendations to the Council affecting the discipline of the department of another minister.

4. The following recommendations are the special prerogatives of the prime minister

Dissolution and Convocation of Parliament.

Appointment of—

Privy councillors.
Cabinet ministers.

1. *Toronto News*, November 28, 1905. "The Power of the Prime nister."
2. Ibid.
3. Dawson, op. cit., p. 125.

Lieutenant-governors (including leave of absence to same).
Provincial administrators.
Speaker of the Senate.
Chief justices of all courts.
Senators.
Sub-committees of council.
Treasury Board.
Committee of Internal Economy, House of Commons.
Deputy heads of departments.
Librarians of parliament.
Crown appointments in both houses of parliament.
Governor-General's secretary's staff.

Recommendations in any department.

The Formation of a Cabinet. After the prime minister has been selected, he is entrusted with the work of selecting his own colleagues. He is not controlled by the governor-general. He has full discretion. In England, the king can and sometimes does influence the choice of the cabinet ministers by the premier. Though convention has been established that the prime minister has wide discretion and the king has to accept those whom the prime minister chooses yet the king may indicate his own dislikes and the prime minister may drop that person. But in Canada, there is no such discretion exercised by the governor-general. The prime minister in Canada is much more free than his prototype is in England. It depends more or less on the capability and personality of the prime minister. However, the prime minister has to take into account a number of considerations in the selection of his colleagues, which are discussed below.

Considerations dictating the composition of the cabinet. Though unhampered by the governor-general, the prime minister is not so free in the selection of his colleagues as it may apparently seem. He has to take into confidence his friends and other leaders of his party. He can not go against the wishes of his party. Some colleagues thus selected may like to have particular portfolios which may have to be entrusted to them. Now a practice has been established that almost all the members of the cabinet should be chosen from the House of Commons, and in this way the sphere of choice has been limited. The prime minister has to select his cabinet which will be a unity and which enjoys the confidence of the country. Therefore, he has to see that all the important interests like the Catholics, Protestants, French-Canadians and functional interests like farmers and industrialists are represented in the cabinet. Different provinces should also find representation in the cabinet. Some provinces, like Quebec have a special claim. Thus the selection of the cabinet members is more on a territorial basis than on the basis of merit alone. What the prime minister has to take into consideration is more "political availability" in the American sense than ability.

All the same, the prime minister has to see that a member of the cabinet is an able and efficient person. He must be

capable of managing his department. The prime minister looks for creativeness, intelligence, industry and sharpness in a minister. They have to explain and defend their policies in the parliament and to reply to questions and queries put by the members of the legislature. Therefore it requires of them to be good parliamentarians and debators. They must be good speakers as to be able to appeal to the electorate. These difficulties are increased when the prime minister has to form a coalition ministry. In spite of all these limitations on the discretion of the prime minister, his personal likes and dislikes play an important part.

The number of cabinet members is not fixed. It varies according to the needs and the wishes of the prime minister The membership generally varies from 18 to 23. Out of these, three or four members are ministers without portfolio.

After the members are selected they seek re-election from their constituencies so as to confirm that their constituencies have faith in them as ministers. Ministers without portfolio do not seek such election. Ali members except those without portfolio, receive salaries.

Implications of the Cabinet System. There are certain complications in the Candian cabinet system, which may be stated as follows :—

1. The members of the cabinet belong to the parliament in general and to the House of Commons in particular.
2. The cabinet is chosen out of the majority party or a coalition of parties which can command majority in the parliament.
3. A cabinet holds office so long as it retains the confidence of the House of Commons.
4. The cabinet acts as a unit and this involves a certain predominance of the prime minister.

Functions of the Cabinet. Some of the most important functions of the cabinet may be summarised as follows :—

1. The initiations and formulations of policy of the government.
2. The execution of this policy as confirmed by the parliament.
3. To raise revenue and provide for appropriations.
4. To co-ordinate and co-relate different departments of the state,

Thus the cabinet performs legislative, executive, financial and administrative functions. It is the supervisory and directing body in Canada.

Salient features of the working of the Canadian Cabinet. Like the English cabinet the Canadian Cabinet also has

adopted the English ideas of secrecy, unity and joint responsibility.[1]

Collective Responsibility. The members of the cabinet are collectively responsible for acts of omission and commission of the cabinet. The decisions are arrived at after a full and frank discussion in the cabinet where members may put forward their views. After a decision has been reached, all members are bound by it. No one can escape the responsibility on the ground that he was opposed to the cabinet decision and had been out-voted by it. He must defend the cabinet action inside and outside the parliament. If he disagrees with the cabinet decision, he may resign. In 1902, Mr J. Isreal Tarte, the then minister of public works, spoke in the parliament and outside the parliament in favour of certain changes in the tariffs while the cabinet was opposed to such changes, and Sir Wilfrid Laurier, the then prime minister, asked him to resign. Mr. Tarte consequently resigned. While defending this action of the cabinet in the House of Commons on March 18, 1903, Sir Wilfrid Laurier remarked "But when a policy has been determined upon, solemnly agreed upon, and solemnly promulgated to the House and to the people, I need not tell the House .....that under such circumstances it is not only the duty politically of a member of the cabinet, but it is his duty both as a friend and as a member of the party, to stand by that policy. And, if at a later stage he thinks that the policy is wrong, that it ought to be improved, that it ought to be amended, then the battle, or the action is to be taken, not before the public, not before the constituencies, but the reform has to be advocated in the first place in the cabinet of which he is a member." The members of the cabinet are responsible to each other as well. No one member can take a vital decision alone. He must consult his colleagues. If he does not, the cabinet, and particularly the prime minister, may demand his resignation. In 1916, Sir Sam Hughes decided upon establishing a militia sub-council in England, including the appointment of its personnel, without previous consultation with the cabinet. The then prime minister. Mr. R. L. Borden, asked Sir Sam Hughes to resign because on matters of importance "involving considerations of the gravest moment, the cabinet must be consulted before action was taken All the members of the government have full and direct responsibility in respect of the very important matters which the proposed council would advise upon and direct."

Secrecy. The nature of responsibility of the cabinet requires that the proceedings of the cabinet should be kept secret. The public should not know the differences between the members of the cabinet, so that the members may be able to present a unity before the parliament and the public. Therefore the Canadian Cabinet followed the same old practice taking no notes of its proceedings, as was followed in England. There was

1. Dawson, R. M.: 'Constitutional Issues in Canada (1900—1931). (1933)' p. 109.

no secretariat and no record was kept. The Special Committee of the Senate on the Machinery of Government, 1919, recommended the establishment of a secretariat on the lines of the one established in England after the Great War (1914-18).

Cabinet and the House of Commons. Cabinet is a committee of the House of Commons. Therefore, it continues only so long as it retains the confidence of the house. The house may express its lack of confidence in one of the following four ways and thus may compel the cabinet to resign :—

1. It may pass a simple vote of no confidence.
2. It may pass a vote of censure criticising certain specific action of the cabinet.
3. It may reject a measure declared vital by the cabinet.
4. It may pass a bill in opposition to the cabinet.

The cabinet does not care for an hostile vote in the Senate. But when the House of Common, takes any of the above steps, two courses are open to the cabinet : (1) It may resign and the opposition will make the government or (2) It may not resign but demand a dissolution of the House so as to appeal to the electorate. If the cabinet gets a majority again after the general election, it continues in power. If it is defeated it esigns. In England, the practice is that a cabinet defeated at the election, resigns as soon as the election is over. In Canada. we can not say that this practice prevails. In 1925, the Liberal government, after being defeated in the House, appealed to the country. It lost its majority at the election, *i. e.*, securing merely 101 seats out of a totol of 245. Nine ministers including the prime minister lost their seats in the parliament. The opposition party got the largest number of seats *i. e.*, 116 in the Commons, though it also did not have a bare majority. The Progressive Party carried 24 seats. The Liberal government did not immediately resign after the election but waited for the verdict of the new parliament. The result was that the Liberal Government continued to advise the governor-general for six months with the help of the Progressive Party. Thus the constitutional practice followed in England was violated. But since then no such incident has happened and it is hoped that Canada will also adhere to the same constitutional practice.

But in actual working of the government, the position of the cabinet is very strong. Though a committee of the House, it is more of a master than a servant of the House. It is not a "hired servant whose only duty is to obey the directions, the orders, the mandates of the representatives in Parliament who support it, of Parliament as a whole, and of the populace of the country." [1] The cabinet is not responsible to its members but the members are responsible to it and the individual member is held responsible for his vote before the cabinet. Though the cabinet, in theory, is responsible to its supporters in the house

1. Right Hon. Arthur Meighen in the House of Commons on Feb. 12, 1928.

and to the parliament as a whole, yet in practice, this responsibility does not exist. The policies of the cabinet are discussed in the House of Commons and in the Senate, yet the majority is so arranged that the house is incapable of going against the wishes of the cabinet. The whips of the government so manage the members of the house and particularly the supporters of the government that they have no choice but to vote favourably to the government. They have no discretion of their own. Besides patronage, whips and other cohesive influences, the cabinet has always a threat of dissolution in its hands. Every member will vote after due consideration so that his vote may not be responsible for general election. The opposition may like to have a general election in the hope of getting a majority, but the government supporters and netural members do not wish to risk their seats in the parliament and bear the expenses of the election. Thus the cabinet can be sure of its continued existence unless it does something which violently outrages the view of its supporters.

The function of the cabinet to-day is to give a lead to the parliament. If it fails to do so it has no right to existence. A cabinet must be ready with a decision on every problem before the country. It is not a successful government if it does not have the capacity of arriving at decisions soon. The parliament, to-day, is just like a debating society. The discussions lack reality and vigour. They are formal. The function of the parliament to-day is merely to register the will of the cabinet. The cabinet has come to be the real legislature. "Canada is governed by two legislatures, one real, the other sham. The sham legislature is composed of the Governor-general, the Senate and the House of Commons. The real legislature consists of a despotic ruler—the Premier, an Upper House and the Cabinet; and a Lower House—the caucus of government members of Parliament."[1] The caucus of the government members of parliament is nothing but a body of government supporters. They hold their meetings and decide upon important matters. The life of the cabinet depends not so much on the House of Commons as a whole as on this part of the house.

The Cabinet and the Governor-General. The relations between the cabinet and the governor-general in Canada are regulated on the same lines as those between the cabinet and the king in England. The governor-general does not attend the meetings of the cabinet but all official communiques come to him through the cabinet. He always accepts their advice as the king in England does. He has no discretion of his own. Though constitutionally he can dismiss them if he does not like their advice, he will not do so unless he is sure that he is able to form another government, but the sense of political responsibility has become so strong with Canada's new status in the empire that to do so would

1. Dawson, R. M.: Constitutional Issues in Canada 1900—1931, (1933), p. 121.

be an act of extreme danger."[1] He is merely a constitutional head.

QUESTIONS AND TOPICS.

1. Describe the powers and functions of the Governor-General.

2. Critically examine the position of the Prime Minister in relation to the Cabinet and the House of Commons.

3. Discuss the relations of the Cabinet with (*a*) the Governor-General and (*b*) the House of Commons.

4. What is meant by Cabinet responsibility ?

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1. Dawson, R. M.: *Constitutional Issues in Canada* 1900—1931, (1933),Chapters II and III.
2. Keith. A. B.: *The Governments of the British Empire* (1935), pp 388—400 and 416—423.
3. Kennedy, W. P. M.: *The Constitution of Canada* 1534—1937, (1938), pp. 578—583.
4. Porritt, E. M.: *Evolution of the Dominion of Canada.*
5. The Statesman's *Year Book* 1940.

1. Kennedy, W. P. M. The Constitution of Canada 1534—1937. (1938) p. 383.

CHAPTER 32.

THE PARLIAMENT

Parliament. The legislative authority of Canada vests in the King-in-Parliament. The parliament consists of two houses —the House of Commons and the Senate. In theory the concurrence of all the three parts is essential for passing a law. But in practice, the most important part of the King in law-making is played by the House of Commons; the part of the King in law-making is limited to giving his assent to bills after they have been passed by both the houses of parliament. The assent of the king is given by the governor-general of the dominion. In theory this assent could still be refused. But a convention has been established that it has become politically impossible for the king or the governor general as his representative to refuse this assent. Thus the assent of the king in law-making is only formal. We now proceed to discuss the two houses of the Canadian Parliament.

House of Commons. The House of Commons is the lower chamber of the Canadian parliament. It is the most popular branch—representative of the people of Canada. It is elected for a term of five years but is subject to earlier dissolution.

Composition. The membership of the house is not stationary. It varies after every ten years according to the change in population as shown by every decenial census. The representation for Quebec is fixed by the British North America Act at 65 and this figure cannot be changed. For the representation of other provinces the constitution has laid down a formula: "There shall be assigned by each oft he other provinces (other than Quebec) such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number 65 bears to the number of the population of Quebec (as ascertained)." Thus the total membership of the house at any time will be equal to

$$\frac{\textit{The Total population of Canada}}{\textit{Population of Quebec}}$$

65

The house, as elected on March 27, 1940 is, according to the result of 1931 census composed of 245 members. The different provinces have representation in the house as follows: Quebec, 65; Ontario, 82; Nova Scotia, 12; New Brunswick, 10; Manitoba, 17; British Columbia, 16; Prince Edward Island 4; Saskatchewan, 21; Alberta, 17; and Yukon Territory, 1.

The present house according to party alignments is composed of :

Liberals	184
Conservatives	38
Co-operative Commonwealth Federation	8
New Democracy Party	8
Independent	3
Smaller parties	4
Total ...	245

Problem of Redistribution. Another problem allied to the problem of readjusting representation of different provinces is that of redistributing electoral districts in the provinces for purposes of election. This is done by the dominion parliament and not the provincial parliaments. Redistribution of electoral districts is done by the government along with the readjustment of representation after every decennial census. A schedule showing electoral divisions in each province is attached to the representation Act as its part. The redistribution of electoral divisions by the government led to the very nefarious practice of gerrymandering as in America. By gerrymandering is meant that the party in power so arranges the electoral districts as to secure the largest representation for itself in the coming election. This was an "opportunity to advance the interests of the political party that was in power."[1] Gerrymandering was seen at its worst at the redistribution of 1882 and 1892.

The liberals were opposed to this practice of gerrymandering. They denounced it when the Representations Acts of 1872, 1882 and 1892 were passed, and also at the general elections of 1882, 1887 and 1891. In 1893 they called a convention and passed a resolution denouncing this practice. Consequently, when they came in power in 1903, they framed a bill for reorganising the redistributing system, which was passed by the parliament and became law. The bill made provision for a committee of seven, four members belonging to the party in power and three to the party in opposition. The representatives of the two parties were to be elected by the parties respectively. Thus the old practice of attaching a schedule to the Representation Bill was discarded. The new method has been very successful and is adhered to even to-day. The committee arrives at a compromise and no party has any serious grievance against the party in power. Thus Gerrymandering has been abolished.

The principles on which this committee works were explained by premier Mackenzie King in his speech in the House of Commons on March 25, 1924 as follows :

1. The basis in arranging the constituencies is county municipal organization. The municipal organisation is also the basis of entire judicial system and the municipal system. This facilitates the representation. The members have a previous training in municipal organisations and prove their administra-

1. Poritt, E. : Evolution of the Dominion of Canada (1908), p. 311.

tive ability before being elected to the parliament People know the candidates and their worth.

2. The unit for the urban constituencies is larger than the unit for rural constituencies. The reasons are : (*i*) the rural population is sparse and scattered, while the urban population is more concentrated. Thus the organisation of public opinion is much more easy in urban areas than in rural areas ; (*ii*) The means of communications in rural areas are not so facile as in the urban areas. Therefore there cannot be a direct contact between a representative and his constituents, if population is scattered ; (*iii*) the urban population is much more fluctuating than that of the rural areas ; the latter is stationary.

3. The districts are compact and homogeneous, so that public opinion within one given area will be as nearly true to the feeling of the whole community as it is possible to get it.

4. An equalization of population is maintained between constituencies, both in the case of representation in rural areas and in the case of urban areas. The aim is to get equality in regard to the number of persons composing different constituencies.

However, objections have been raised to the principle of giving a larger unit to the urban area and a smaller to the urban area. This has led to disparity in representation. It is contended that half of the cities of Canada have been disfranchised. The rural areas with a very small population have the same number of representatives as the big industrial and manufacturing cities with huge populations. While speaking in a debate in the House of Commons in 1924, Mr. Meighen, leader of the opposition, quoted figures in support of this contention. In the city of Montreal the unit of representation is nearly 56,000 persons while that for the rest of the province of Quebec 31,000. In the province of Ontario. the cities of Toronto, Ottawa, Hamilton and London—added together—have a unit of representation of 56,000, while the rest of the province has a unit of 25,642. The city of London with a population of 54,000 has only one representative, while Huron and Bruce with a population of 92,000 have four representatives. Again, the reasons which led to giving a larger unit to urban and a smaller one to rural areas do not have much weight to-day. The population is increasing both in rural and urban areas. The rural population is not so much scattered to-day as it used to be. The development in the means of communications has made it possible for the representatives to have a direct contact with his constituents scattered over a large area. The difficulty of covering the districts has been lessened. The city population is becoming much more stationary and the rural population is becoming as much fluid as city population. Therefore equalisation of units for both rural and urban areas is demanded.

Canada has single member constituencies, all constituencies with an exception of two or three return one member each. A constituency is termed a "riding."

Franchise. Franchise is not regulated by the dominion parliament but the provincial parliaments. The general qualifications required of a voter for voting at federal elections are as follows :

1. He must be a British subject either by birth or by naturalisation.
2. He must be 21 years of age.
3. He must have been a resident of Canada for 12 months before the issue of the writ of election.
4. He must have been a resident of the electoral division in which he votes for 2 months immediately before the issue of the writ of election.
5. Indians fulfilling these conditions are enfranchised only if they have served with the Canadian forces.

Disqualifications. There are certain disqualifications also. Some persons can not vote. The following are prohibited from voting :

1. Judges appointed by the governor-in-council.
2. Chief electoral officer of the dominion.
3. Returning officers
4. Election clerks.

Besides them, no one, otherwise qualified as an elector, is to be disqualified from voting at a dominion election because he is employed in any capacity in the public service of Canada or of a province.

5. Persons disfranchised for corrupt and illegal practices.
6. Criminal prisoners.
7. Inmates of asylums and public charity institutions.
8. Persons disqualified for provincial elections on grounds of race.

Except these disqualifications, all persons, male and female, can vote. There is no plural voting. In Nova Scotia, however, the system of plural voting for those who have property qualifications in different places continues. But in actual practice its exercise has been made difficult by the fact that polling throughout the dominion is held on the same day.

Qualifications for the members of the House. The British North America Act 1867 does not provide any qualifications for the members of the House of Commons. However, there is a provision in the dominion election code of 1898—1908, which reads as follows : Any British subject may be a candidate in an election for a seat in the House of Commons." A further paragraph reads : "No qualification in real estate shall be required of any candidate." Thus no residential qualifications are required. Any British subject, whether he resides in Canada

or not, can be a member of the house. Similarly, a candidate need not be a resident of the constituency from which he is elected.

Disqualifications for Candidates Certain classes of persons are disqualified for standing as candidates for the house. These are :

1. Persons accused of corrupt election practices.
2. Criminal prisoners.
3. The insane and the lunatic.
4. Government contractors.
5. Members of provincial legislatures.
6. Every person accepting or holding any office, commission, or employment, permanent or temporary, in the service of the government of Canada at the nomination of the crown or at the nomination of any of the officers of the government of Canada, to which any salary, fee, wages, allowance, emolument, or profit of any kind is attached. Ministers are exempt from this provision.
7. Sheriffs and registrars of deeds and clerks of the peace and crown attorneys.

Method of Election. The first step in the election procedure is the nomination of the candidate. The method is very simple. All that is required is that each candidate shall, on the nomination day, file with the proper official a nomination paper, duly proposed and seconded and signed by 25 voters. This official (Returning Officer) ascertains that these persons have consented in writing to the nomination of the candidate. Along with the nomination paper, a candidate is required to deposit a sum of $200. This is intended to discourage frivolous and irresponsible persons from seeking election, as it is forfeited to the king if unsuccessful candidate fails to poll half the votes polled by the successful candidate. Otherwise the amount is returned to him after the election.

In a general election, poll in every constituency takes place on the same day. Polling takes place between 9 A. M. and 5 P. M. Voting is by secret ballot. Ballots are counted at the polling stations by the Deputy Returning Officers and the government comes to know, unofficially of course, its fate by midnight of the election day. All expenses for conducting the elections are borne by the dominion treasury.

Election expenses. All candidates are required to submit their election expenses return to the returning officer within 60 days after the election. If a candidate does not submit such accounts he is legally debarred from sitting in the house. Within ten days of the submission of election expenses by the candidates, the returning officer is required to publish a summary of these accounts in a leading paper in every constituency. Any elector can go and see these accounts, held with the returning officer, within 6 months, on the payment of a

nominal fee. If any elector accuses a candidate for irregularities in accounts, investigation can be held if the elector deposits a sum of $500 as security of costs.

Election Frauds. The election system in Canada is not so simple as it apparently seems. It has led to a very nefarious practice of " Pork Barrel." But what is this ' Pork Barrel ' and how does it operate ? Pork Barrel is a practice to compensate the supporters of the government. It is a patronage in the hands of the party in power. It is just like the ' spoils system ' in America. These ' spoils ' may take any form—public money, public offices or public domain. It is a method of bribing or debauching constituencies. Constituencies and groups supporting the government receive favours from the government while hostile constituencies and groups are starved.

This system is at its worst when there is any by-election. The government makes lavish promises to the constituency from which the candidate is to be elected. These promises may be of building a railway line or a brick and tile yard, or erecting a dockyard, or constructing a water-works, etc. In a by-election held in Victoria in 1920 the government announced to build a dry dock costing $5 million though there were other ports, like Vancouver, which had no such dock and were in greater need than Victoria which had already one. The government candidate was elected and Victoria had another dry dock. In 1923, there was a by-election in North Essex. The government promised the erection of docks and breakwaters, water-works and a brick and tile yard. The government candidate, Mr. Tim Healy, was elected and North Essex had them all. A supplementary bill amounting to thousands of dollars was passed in no time. On the other hand, if a constituency fails to elect the government candidate all these promises are forgotten. In 1923, again, there was a by-election in Halifax. The government promised the construction of an elevator costing $12,00,000. But Halifax did not elect the government candidate and she did not have the elevator on the ground that the scheme for its construction was ill conceived and plans were wrong.

The result of this " Pork Barrel " is that there are deficit budgets year after year. Money is wasted and the people are heavily burdened with increasing taxes. National debt increases by leaps and bounds. In 1921, this increase amounted to $80,000,000. M. Grattan O'Leary has described the practice in the following words, " For the Pork Barrel dispensed with equal rapacity by all parties and governments since confederation has been the worst penalty of our Canadian democracy. It has been the chief source of whatever of corruption has degraded our public life during the past fifty years. It has sinned more than all other agencies combined against efficiency and honesty in politics. And it tends to-day as one of the chief reasons for the extravagance and waste that father taxation and debt."[1]

1. *MacLean's Magazine*, February 15, 1924, (481 University Avenue, Toronto, Canada).

Second defect in the election system is that elections are not really reflective of public opinion. They are controlled by parties and through them by vested interests. Big companies and corporations, great industrialists and traders control the parties. They make huge contributions to party funds, particularly before a general election. They contribute to the funds of both the parties and perhaps equally. In an investigation held in 1927, some glaring facts were brought to light. The B. C. Brewery Company alone contributed $10,000 towards election funds of the liberal party and nearly the same amount to those of the conservative party. H. Ripstien, another liquor merchant, contributed $7,000 towards the election fund of the conservative party alone. It was found that as a result of these contributions they were protected from heavy taxes and were carrying on their illegal transactions.

Thirdly, the election expenses are very high. The election campaigns of 1925 and 1926 in Montreal constituency alone cost $25,000 and $15,000 respectively. The reason for such high expenses is that electors are bribed and votes are bought. Electors are paid travelling allowances, cars are arranged; and they are 'treated' with liquor and other refreshments. The result is that to stand as a candidate for the house has become a 'game' for rich men; or if a person, who is unable to finance his election campaign, stands, he must sell his independence.

Fourthly, the laws prohibiting and punishing such practices are not enforced. Law as far as it concerns election frauds has become a dead letter. The election expenses accounts are not always submitted. Again, electors or other persons interested in reform can not have any investigation in irregularities in these accounts on account of the deposit of $500, dollars required from them. No person can spare and would like to spare $500 from his pocket for the purpose of enquiry into irregularities in accounts of another person.

Methods of Reform. There has been a cry against these practices both inside and outside the parliament. Various suggestions have been made for their reform. It has been suggested that political parties should be given legal and constitutional recognition. They are the most important part of to-day's working constitution. After they are legally recognised as a working part of the constitution, their inner working will be easily controlled. The agents of the parties who collect and spend party funds should be controlled. The annual account of such funds should be submitted to the parliament. To ascertain their correctness, official auditors should be appointed to check party accounts. Similarly the returns of election expenses of individual candidates should be audited by recognised auditors. All these reports should be submitted to the parliament. These party funds should be under the control of a recognised official, who can be held responsible and punished for any misuse of party funds. Election expenses should be limited by law. Other bodies and groups, which generally spend large sums in advertising and propaganda for a friendly candidate,

should not be allowed to do so. Candidates should be required to submit election expenses returns as they are required now. And the defaulters should be punished. Public should be allowed to demand investigation or any irregularities in these accounts without the payment of $500 as is required at present. Election laws prohibiting and punishing corrupt election practices should be more stringently enforced and the party should be competent enough to take appropriate action. However, the last and the most effective suggestion is to organise public opinion against these practices. The electorate should be educated against their abuses and disadvantages. It is only when the people realize these defects and corruption that any effective remedy is possible.

Election Disputes. Election disputes are tried by two judges of the superior court of a province in which the election in question is held. Appeals from their judgments can be taken to the federal Supreme Court. These judges report their decision to the House of Commons which takes appropriate action. If a member is to be disqualified from the membership of the house a motion for a new writ is moved in the house.

Terminating Membership. A member of the house may resign at any time by giving a formal notification of his intention to the speaker. However, sometimes the method followed is somewhat similar to that followed in England. A member, who desires to resign his seat accepts an appointment to a county postmastership. After a day or two of his appointment, he submits his resignation to the postmaster general.

Payment of Members.[1] The members receive an allowance of 4,000 dollars for the session. The deputy speaker is paid an allowance of 1,500 dollars for the session. The speaker receives 6,000 dollars per annum. The allowance of the members is subject to deductions for non-attendance. The leader of the opposition receives $7,000 as extra allowance.

Officers of the House of Commons. The principal officers of the House of Commons are the speaker, the deputy speaker, the clerk, the assistant clerk and the sergeant-at-arms. The clerk, the assistant clerk and the sergeant-at-arms are continuing officers of the house. The speaker and the deputy speaker are elected at the beginning of every new parliament.

The Speaker. The speaker is the most essential officer of the house. Every new house elects its speaker before it proceeds to any business. The method of election of the speaker is a little different from that either of the speaker of the House of Commons in England or that of the House of Representatives in America. In England, the speaker is elected by the house as a whole, the government or the cabinet having no particular share in his election. In America, on the other hand, he is elected exclusively by the majority party. In Canada, however, the position is midway. The premier proposes a name for the speakership. It is seconded by another member

1. Statesman's Year Book 1940, p. 302.

of the cabinet. This nomination is then usually supported by the leader of the opposition. There is seldom another name proposed and generally the speaker is elected without division. While the election is going on, the chair of the speaker lies vacant: however, the clerk of the house directs the proceedings from the table in front of the chair. After the speaker has been elected by the house, he takes a pledge, standing at the steps of the chair, for maintaining the rights and privileges of the house. The mace, the symbol of the speaker, is laid down on the table. by the sergeant-at-arms. Then the speaker, the sergeant-at-arms and the members of the house proceed to assemble at the bar of the senate. There the speaker declares his election before the governor-general. The governor-general as the representative of the crown approves and confirms his election. Then the speaker demands the "ancient and undoubted rights and privileges of the Commons" which are granted.

The Canadian speaker besides requiring all the qualifications necessary for the British speaker "must have established some claims on his party."[1] This factor has made a difference between the positions of the English and Canadian speakers. Though both are required to perform their duties impartially unlike the speaker of the House of Representatives in America, the Canadian speaker does not sever his connections with his party after his election as speaker as the British speaker does. Though he does not attend party caucuses during his term of office, or make speeches in the house in his party's favour as the American speaker does, he certainly makes political addresses outside the house and particularly, in his constituency. He does not starve his constituency as is the case with the British speaker, he imparts governmental favours and patronage to his constituency. The British speaker, once elected, generally continues a speaker in successive parliaments until he retires. The American speaker, on the other hand, has to seek election every year. The Canadian speaker is elected for the full term of the parliament. Both British and American speakers seek re-election, but not the Canadian speaker. A rule has been established that speakers should be elected from both the races (English and French) inhabiting Canada alternatively. If in one parliament the speaker belongs to English-speaking Canadians, in the next parliament, he would be elected from amongst the French-speaking Canadians. Similarly, if the speaker is English-speaking Canadian, the deputy speaker must be French-speaking Canadian and *vice versa.*

Functions of the Canadian speaker are nearly the same as those of the British speaker. Most essential of them are:

1. He presides at the meetings of the house.
2. He is the spokesman and the representative of the house in its collective capacity.
3. He demands 'the ancient and undoubted rights and privileges of the commons.'

1. Porritt, E.: Evolution of the Dominion of Canada (1918). p. 381.

4. He is the guardian and protector of the rights and the privileges of the house.
5. He maintains order in the house,
6. He decides points of order, recognises members, puts questions and announces the results of votes.
7. He declares and interprets the rules of the house.
8. He has a casting vote, which is exercised only in case of a tie.

The speaker exercises these functions impartially. He favours neither the government nor the opposition. The speaker has performed his functions well.

Summoning and Dissolution of the Parliament. There is no provision either in the British North America Act, 1867, or in any subsequent Act providing for summoning or dissolution of the parliament except that the British North America Act requires that the parliament should meet at least once a year. However, the parliament is convened by proclamation issued by the governor-general.

When a new parliament assembles, the members of the House of Commons take oath and sign the roll at the table in the chamber of the Commons in the presence of the clerk. After this the house proceeds to elect the speaker. After the election of the speaker has been approved and confirmed by the crown and the speaker has demanded the 'rights and privileges' of the houses, the house reads a formal bill to manifest its autonomy and its right to deal with matters other than those referred to in the royal proclamation convening parliament or in the king's speech from the throne. A dummy bill long known at Otawa as "Bill No. 1," respecting the administration of oaths of office[1] is handed by the clerk to a member on the treasury benches—the benches on which sit the members of the cabinet,—who introduces it to the house and moves that it be read for first time.[2] As soon as it has been read for the first time, it is taken no further except when the next session of the houses is called and the same first reading is gone through. Now the house is ready for transacting business which continues unless the house is either adjourned or prorogued or dissolved.

Adjournment is a procedure by which parliament stops its business for a small interval. The house may adjourn for a few hours, for a night or some days or weeks. Prorogation is effected by the governor-general on the advice of the cabinet. It terminates a session of the parliament and wipes out all pending business. After prorogation, the parliament meets only on a proclamation by the governor-general which is again issued on the advice of the cabinet and at a time which the cabinet sees fit. Prorogation may be previous to the close of the term of the parliament. Dissolution, on the other hand, means bringing

1. Porritt, E.: Evolution of the Dominion of Canada, (1918) p. 379.
2. *Cf.* House of Commons Debates, Jan. 19, 1917.

the life of the parliament to an end, thus necessitating a general election. It is effected by the governor-general on the advice of the cabinet, who desires to seek the mandate of the electorate or ascertain public opinion on a matter of fundamental importance. After every five years—the normal life of the house—the parliament and the house automatically cease to exist and a new election is held.

Speech from the Throne. In every new parliament, after the house reads the dummy bill, it proceeds to consider the speech from the throne. The speech is delivered by the governor-general, though it is framed as in England by the cabinet. It informs the members of the house of the important problems requiring immediate solution. It sets out the policy of the government, which it seeks to follow and includes the measures to be sponsored in the session.

Address of thanks to the governor-general. After the speech from the throne has been read the government moves a motion that "an address be presented to his excellency, the governor-general, offering the thanks of this house to his excellency for the gracious speech which he has been pleased to make to both houses of parliament." It is moved by one of the younger members of the government supporters and seconded by another If the mover speaks in English, the seconder addresses the house in French and *vice versa*, thus maintaining the equality of French and English languages.

After the motion has been moved and seconded, a debate follows. All members are allowed to speak for unlimited amount of time The government policies are examined and criticised. A general criticism is made of the policies of the government. Then follows an expert criticism. The out-going ministers criticise the policies of the departments of which they had been the heads, and the minister-in-charge replies to these criticisms and defends his position. This provides a good opportunity for members to let their opinions be known and thus to present them to their constituents. The government comes to know the "unfavourable conditions in the body politic," so that it may find some appropriate remedy for their removal. Further, it provides an opportunity for the opposition to challenge the government. If the opposition so decides, an amendment is moved to the address of thanks. This amendment expresses concurrence with the proposed address of thanks, condemns the policy which is assailed, and expresses regret that in the speech from the throne there is no announcement that the policy challenged is to be amended or abandoned.[1] If this amendment is carried through the house, it means it has no confidence in the government and the government consequently resigns. After the motion for the address of thanks has been passed by the house, another motion is moved by the government benches that it be presented to the governor-general. This is merely formal and there is no debate.

1. Porritt,. E : Evolution of the Dominion of Canada, (1918), p.406.

Committees of the House. There are 11 standing committees in the house. The most important of these are ; (1) Committee on Privileges and Elections : (2) on Railways, Canals and Telegraph lines ; (3) on miscellaneous private bills ! (4) on Banking and Commerce ; (5) on Marine and Fisheries ; (6) on Public accounts. The membership varies from 25 to 119. The committee on Railways, canals and telegraph lines contains the largest number (119). These committees are composed of members both from the government party and the opposition party. The government supporters are in a majority on every committee. These members are selected and appointed by a special committee, which is composed of both government and opposition members, the former being in majority. These committees are appointed at the beginning of the parliament and continue for the session. These committees report on bills referred to them by the house. They call evidence, both official and non-official, and have a power to send for persons, and records They investigate matters before them and make their reports to the house.

Besides these standing committees, the house acts as a committee when it deals with revenue and appropriation bills. Then it is known as the Committee of the Whole House. When the house turns itself into the committee of the whole house, the speaker leaves the chair and the mace is removed from the table. In the committee of the whole house the members are free to speak for as many times and as long as they like. They can propose any number of amendments. However, debate can be limited if the parties so arrange. Otherwise it provides an opportunity to have a full discussion. Every member can say what he feels. The back-benchers get full opportunity to share the discussion.

Procedure. The rules of procedure in the House of Commons are almost the same as followed in the House of Commons in England. The rules of the house are framed on the English model. These rules, however, are not adopted by every new parliament but form a part of the law of parliment. All money bills originate in the House of Commons, the Senate does not possess the power of origination of money bills. It can amend any money bill except supply bills. The house, however, has passed a law prohibiting such a power to the senate. All government measures originate in the House of Commons as there are, generally, no government members sitting in the senate. The rest of the bills can originate both in the house and the senate.

A bill, in the house, goes through the same stages of first reading, second reading, committee stage, report stage and the third reading as the House of Commons in England. Every stage bears the same importance as it does in England. A closure can be applied in the house if the government desires to expedite the bill. It is done by moving a resolution to that effect, if the notice of such an intention has been given one day before. Money bills are considered by the committee of the whole house. The budget provides an opportunity for the criticism of the general policies of the government and the administration. Ordinary members do

not have the power of proposing alterations or proposing amendments except that they may propose reduction in taxes.

After a bill has been passed by the House of Commons, it goes to the senate. If the senate passes it, it goes to the governor-general for his signature. If the senate amends a bill, it goes back to the House If the latter agrees, the amendments stand. If it disagrees, the question is séttled by messages.

After a bill reaches the governor-general for his signature, he may sign it and it becomes law. He may not sign it and withhold his assent, thus reserving the bill for the signification of the king's pleasure. The signification of the king's pleasure was formerly exercised by the king on the advice of the British cabinet. But now it is exercised on the advice of the dominion cabinet. Therefore the veto power of the king or the governor-general is obsolete now.

Thus the rules of procedure of the house are nearly the same as those followed at Westminster with slight changes here and there. When there is any doubt on any point and the rules of the house do not provide any clarity thereon, the rules followed at Westminster are depended upon. The quorum of the house is 20, the speaker being counted as one member for that purpose.

The Senate. The senate is the upper house of the Canadian legislature.

Composition. The senate consists of 96 senators. The distribution of seats among different provinces is as follows:—

Ontario	24
Quebec	24
Nova Scotia	10
New Brunwick	10
Prince Edward Island	4
Manitoba	6
British Columbia	6
Alberta	6
Saskatchewan	6
Total	96

The governor-general can create more senators if he considers it necessary but the number of the senators may not exceed 104. Senators are nominated by the governor-general on the advice of the ministry. They hold office for life.

Qualifications. The following are the qualifications required of a senator:—

1. He must not be less than thirty years of age.
2. He must be a natural born or naturalised British subject.
3. He must be a resident of the province for which he is appointed.
4. He must hold property, real or personal, worth $4000 in that province.

5. His real and personal property must be worth $4,000 over and above his debts and liabilities.
6. For the senators from Quebec an additional qualification is required. They must hold their real property qualifications in the senatorial division for which they are appointed or must be resident in their respective divisions.

Salaries and allowances. Senators receive the same sessional allowance as the members of the House of Commons. The speaker of the senate gets a salary of 6,000 dollars per annum, and the members get an allowance of 4000 dollars for the session, subject to deductions for nor-attendance.

Terminating Membership. The membership of the senate terminates in one of the following ways :

1. A senator may resign by writing to the governor-general.
2. If he fails to attend two consecutive sessions.
3. If he loses his British nationality.
4. If he is declared bankrupt, insolvent, or becomes a public defaulter.
5. If he is attained of treason or convicted of felony or of any infamous crime.
6. If he loses the property or residential qualifications required of a senator.

However, senators never resign. It is either by death or non-attendance of two consecutive sessions that membership generally terminates and five or six vacancies a year are created. Those vacancies are filled by the governor-general on the advice of the ministry.

Procedure. Procedure in the senate is almost the same as in the house of commons. All divorce bills and other hills except money bills and governmental bills can originate in the senate. However, in tariff bills the senate plays no important part. It merely gives formal consent to such measures A bill in the senate passes through the same stages as in the House. Firstly it is introduced and reads or the first time. Then a second reading is held and now a discussion on the general principles of the bill is held. After this it goes to either a standing committee or to the committee of the whole house. After it is reported by the committee, the bill is thoroughly discussed. Amendments are proposed, accepted or rejected. Now it is either amended, rejected or accepted It is known as the third reading. After it is passed by the senate, it goes to the house. If the house agrees, it is ready for the governor general's assent. If the house disagrees and amends a bill, a mutual decision is arrived at by the two houses communicating with each other through messages and not by conference as is the case in America.

Senate and the Cabinet. Convention has been established that the cabinet members are generally chosen from the house of commons and seldom from the senate. In the present

cabinet, there is only one senator, Hon. Raoul Danduran. But he is a minister without portfolio. There is one leader of the senate who represents the cabinet or the government in the senate. It is not necessary that he should be a member of the cabinet. His business is to handle all government measures and to get them pushed through the senate. There are no under-secretaries in Canada sitting in the chamber other than that in which the minister sits. All questions and interrogatories are put to the leader of the senate. There is a leader of opposition as well. He is elected by the caucus of the party in opposition to the government.

Nature of the Senate. The senate was intended to be an "independent body, moderating between parties—a body of judicial temper, and of rarer atmosphere than the house of commons."[1] It was intended to be a drag upon the house of commons coach, to provide a check upon hasty and ill considered legislation sponsored by the house of commons working under feverish popular passions and agitation. That is why the senators are nominated for life so that they may not be worried about the elections and responsibility to their constituents. By making the senators independent and providing a fixed salary for them, it was expected that the senate would be able to play a "bold, strong and independent part in the political life of the dominion."[2] But these expectations have not been fulfilled. The senate has defeated its purpose. Those very factors through which it was intended to secure its independence have become the cause of its weakness.

The nomination of the senators by the governor-general acting on the advice of the ministry has resulted in great patronage in the hands of the party in power. It is not the capable and intelligent persons who are nominated to the senate, but only those who have rendered services to the party in power. Services may be political, financial or propaganda through press and platform. Services may be rendered either in the house of commons or in the party organisation. In these nominations nothing but party interests are considered. "From the first, appointments to the senate came under the full control of the mechanism of the party. The security of the position for life, and the freedom from the labours of an election, have made senatorship a desirable crown of party services and to this use the office has been put," wrote Wrong in *The New Statesman*, (Feb. 1914).[3]

The result has been that the senate is full of either big financiers and industrialists or editors and old members of the house of commons who are tired of attending to the pressing work of the house of commons. The senate has become a "champion and safeguard of what are commonly called the big interests."[2] It is forty or fifty members of the senate who control the whole economic life of Canada J. S. Woodsworth, while speaking in the house of commons in March, 1927,

1. "The Round Table" III, p. 719.
2. Porritt: Evolution of the Dominion of Canda, p. 290.

revealed the real nature of the senate. During the course of his speech he gave some very interesting figures: Senator C. P. Beaubien is interested either as a director or as a farmer in 23 big companies. These companies include the Atlantic Sugar Refineries, Ltd, the Frontenac Breweries, the Mount Royal Hotel Company, the North Railway Company, the British Empire Steel Company, Halifax Shipyards, Ltd., Canadian Car and Foundries, Ltd., Pratt and Letchworth Company Ltd., etc., thus covering the whole range of economic life of Canada. Similarly Senator Casgrain is a director of 36 Companies; Senator N. Curry of 12; Mr. W. L McDougald of 12 companies; Senator L. C. Webster of 41; Senator R. S. White of 22 companies. Summarising the speech Mr. Woodsworth came to the following conclusion: "There are 27 lawyers in the senate, of whom 12 are conservatives and 15 liberals. Some 6 conservative lawyer senators are directors in 52 financial and commercial institutions, while 6 liberal lawyer senators are directors on 36 commercial and financial institutions. making a total of 12 lawyers in the senate who are directors in 88 different concerns. There are 11 journalists, editors and publishers, 6 of whom are directors in 34 commercial and financial institutions. There are 11 manufacturers and capitalists who are directors in 131 commercial and financial institutions. There are 8 doctors who are directors in 22 commercial and financial institutions. Thus the senate is full of such persons who have big stakes in the country. They are not only captains of industry controlling the financial and commercial life of the country, but influence and control other spheres of Canadian life. For example, education. According to the "Canadian Parliamentary Guide" of 1926, Mr. N. Curry contributed to different educational institutions as follows; $100,000 to Acadia University; $25,000 to McGill University; $5,000 to Dalhousie University, and so forth; thus controlling the educational policy of the country. The senate is no more a protector of provincial or minority rights as some writers would like to call it. It does not reflect the varied life of the nation.

Nor has the senate served the purpose of a revisory chamber. All the bills passed by the commons are pitched in during the hot days of summer in almost the last session of the parliament. The senate has no time to devote to calm and thorough discussions on the bills before it. They are hurried through. The senate takes hardly five minutes, sometimes the debate may last an hour; while the house of commons takes at least five or six weeks during the session to dispose of supply as in measures committee. The House of Commons works for five days in a week while the senate works for four days only; on Mondays, Saturdays and Sundays it does not work.

Again, there are no cabinet members sitting in the senate. The senators cannot call for information as frequently and as urgently as the members of the house. Sir George E. Foster, speaking in the senate on Feb. 2, 1923, commenting on the helplessness of the senate in getting information described the posi-

tion in the following words: "There is nothing more depressing. A query of information is sent to some practising member of the government in a department, and it is handed over to a clerk, and perhaps ten days, or twenty days, or even a month afterwards a lifeless and unvivified memorandum is brought to this house and is laid on the table. All the spirit has died out."[1] There is a leader of the senate who handles all the bills of the government and tries to push them all through the senate. Instead of being a revisory chamber, the senate has become a divorce court. These bills may go up to forty or fifty in each session. The precincts of the senate may be seen full of women lobbying against or for divorce.

Due to the method of nomination of senators and the absence of the government members from the senate, it has lost its vigour and boldness. It has never quarrelled with the house of commons. The senate has never aroused popular hostility, which could create some interest. Friction between the senate and the house is infrequent. The senate has become merely a ditto chamber. It gives its assent to all government bills passed by the house. It is seldom, when the government does not have a majority in the senate, that the senate may amend, or sometimes reject a bill. Otherwise, "if there be any pertinent criticism to be made of the senate, it is that the chamber has fallen in desuetude. It has become in a way a mere recording body, a 'me too' machine."[2]

This inactivity of the senate has led to its being ignored by the press and the public. No interest is taken in its proceedings. There is no press gallery as such in the senate. A senate employee furnishes a synopsis of the proceedings in the senate to the press free of any charge. The newspapers may publish it in half a column or may not publish it at all. There is no commentary or editorial notes on them. The man in the street is quite indifferent to the senate and its proceedings. Sir George F. Foster in a debate in the senate remarked: "Who on the street asks to know what is the opinion of the senate upon this or upon that question? Who in the press really takes any trouble to know whether the senate has any ideas, and, if so, what they are upon any branch of legislative concern, or upon conditions which require the best and most united work of all in order to arrive at a successful conclusion?"[3] The senate does not share in the executive or administrative work of the government as the American or the French senate does. The Canadian senate does not provide equality to the provinces as the senate in the American federation does. Nor the Canadian senate has that dignity which hovers around the House of Lords in England.

1. Dawson, R. M.: Constitutional Issues in Canada, 1900—1931, p. 250.
2. "Gazette Montreal," May 2, 1917, quoted by Porritt, E. Revolution of the Dominion of Canada, p. 306.
3. Dawsn R. M. P. cit., p. 250.

QUESTIONS AND TOPICS

1. Compare the procedure in the House of Commons in Canada with that in the House of Commons in England.

2. Compare the powers of the speakers of the Canadian House of Commons with those of the speakers of the British House of Commons and the American House of Representatives.

3. Discuss the position of the senate in the working of the Canadian government.

4. Compare and contrast the powers and the position of the Canadian senate with those of the American senate.

5. Write a comparative note on gerrymandering and 'pork barrel.'

CHAPTER 33.

THE JUDICIARY.

In Canada, there are two sets of courts, federal and provincial. The provinces are vested, by the British North America Act, 1867, with the power of administering justice in the provinces, "including the constitution, maintenance and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts." Thus they have exclusive power to create and to maintain courts, exercising both criminal and civil jurisdiction, for provincial purposes. They can regulate the procedure in civil matters. There are three types of such courts: superior courts, district courts, and county courts.

The judges of these superior, district and county courts are appointed by the governor-general of the dominion "subject to certain regulations connected with the provincial bars and to the exclusion of the probate courts of the Maritime provinces."[1] The judges of the superior courts hold office during good behaviour. They are removable by the governor-general if both the houses of the dominion legislature present an address to him for any such removal. The judges of the county courts also hold office during good behaviour and residence in their respective jurisdiction. They can be removed by the governor-general on the grounds of incapacity, misdemeanours, ill-health or such other causes. However, before a judge is removed, investigation is held and he is allowed full opportunity to defend himself and produce witness in his favour. When he is removed, the order in council affecting his removal, the evidence against and in favour of the judge, the correspondence and reports are laid before the parliament within fifteen days of the next session.[2]

The salaries and allowances of the judges of these courts are not very high. They are not uniform throughout the dominion. Judges in Ontario get $1,000 a year. In Toronto, the senior judge gets $2,600 a year and the others $1,500. The judges of the counties get $1,000, a year. When there are two judges, the second judge, provided business warrants it, gets two-thirds of the salary ($666).[3] These salaries are paid not by the provinces but by the dominon. It is an anomaly in the Canadian constitution that the number of judges is determined by the provinces and they are nominated by the provinces and paid by the dominion. However, inferior judicial officers, police magistrates and justices of peace are appointed by the provinces

1. Kennedy, W. P. M.: The Constitution of Canada, (1938) p. 373.
2. Ibid., p. 394.
3. Mr. Rowell and Mr. Boys before the Special Committee of the House of Commons on Judges' Salaries 1928. Quoted by Dawson, M. R., op. cit.

themselve. Secondly, the salaries of the judges are verv low. There has been a suggestion to increase their salaries The special committee of the House of Commons on judges' salaries recommended that the salaries of the judges of the superior courts should be increased to 15.000 dollars per annum, with reasonable additional allowance to the chief justices in such courts.

The jurisd ction of these courts extends to cases arising under both provincial and federal laws. They decide election disputes. They give opinion on the constitutionalitv of Acts for the guidance of the executive, and from these opinions no appeal lies to the Supreme Court of Canada, not even by provincial legislation.[1] However, since 1922 appeals against such opinions declared by these courts for the guidance of the governors, may be taken to the Supreme Court if such opinions are declared by provincial statutes to be judgments of such courts of final resort and these appeals shall be therefore as from judgments, in actions. These courts may be invested with new jurisdiction over subjects not assigned exclusively to the provinces by the dominion government. The procedure in civil matters is regulated by the provinces themselves, while in criminal cases it is regulated by the dominion legislature.

There are only two federal courts : Supreme Court and the Court of Exchequer and Admiralty. The court of exchequer and admiralty has original jurisdiction in revenue cases concurrent with the provincial courts, the cases against the crown and the petitions of rights in the federal field. It also deals with patents and trade marks. All admiralty cases are tried by this court.

Supreme Court. The Supreme Court is the highest tribunal of judicature within Canada. It consists of one chief justice and five puisne judges. They are appointed by the governor-general, and can be removed on an address presented by both the houses of the dominion parliament. Appointmentsare made on the advice of the ministry. Therefore, they are made not merely on the grounds of ability and intelligence of the person, but certain other considerations like services rendered by the person to the party come in and influence the appointments. These are beyond doubt political appointments. As soon as there is a vacancy letters are received by the ministry from those who have been associated with them in politics. Their salaries are very low. It has been recommended that their salary be increased to $20,000 a year.

The supreme court exercises merely appellate jurisdiction—both in civil and criminal matters. In criminal cases, an appeal may be brought by the convicted person before the court if the court of appeal of the province is not unanimous in its decision. In civil cases, the appeals lie to the supreme court from all decisions given by the highest court of final resort in the provinces. This appellate jurisdiction is different in cases

1. Kennedy W. P. M.: Op. cit., p. 394.

of different provinces, and is governed by the federal law. The provinces have no power either to increase or decrease this jurisdiction of the supreme court. The provincial legislatures neither can grant jurisdiction in cases not granted by the federal law, nor can they take away from the cases which are not prohibited by the federal law. However, the federal legislature has a power to allow appeals to the supreme court from the judgments of the provincial courts which are not of final resort and whose judgments are not final. The supreme court has final jurisdiction in cases of election disputes. There is no appeal from its decisions. The court, unlike the Supreme Court of America, tenders advisory opinions also. The governor-general can take its advice on any question of law or fact. Though this advice is not binding on the governor-general, nor on any Canadian judge in any specific case, it is treated as final judgment for purposes of reference to the Privy Council.[1]

The Supreme Court of Canada is not a supreme court in the real sense of the term. It is not the highest judicial tribunal for the dominion. Appeals from its decisions lie to the judicial committee of the privy council. Appeal also can be taken from the provincial high courts direct to the privy council. Appeals from the decisions of the supreme court are taken to the privy council on special leave granted by the supreme court to that effect. Similarly in the case of provincial high courts these appeals require either special leave of the court or are as of right, the latter being governed by rules laid down in orders-in-council on local Acts. However, leave to appeal to privy council is granted only in cases of constitutional or political or financial importance. To-day, appeals in criminal cases have been prohibited by a Canadian law and this law has been accepted by the privy council as *intera vires*. Proposals are afoot for restricting appeals in civil cases as well. Whether appeals are continued or discontinued to the Privy Council, it must be said that the privy council has performed its function well and given the Canadian constitution its most abiding form.[2]

QUESTIONS AND TOPICS

1. Describe ihe judicial organisation in Canada.

2. Compare and contrast the Supreme Court of Canada with that of the U. S. A.

1. Kennedy, W. P. M. : The Constitution of Canada, (1935) p. 395.
2. Kennedy, W. P. M. : The Constitution of Canada, (1938), p. 399.

CHAPTER 34.

POLITICAL PARTIES

Chief Features of the Canadian Party System. The political parties in Canada are as essential a part of the government as they are in other countries like England, France and the U. S A. They are not recognised by the constitution; they are an extra-legal growth. Nor a necessity has been felt of controlling these parties by law as it has been felt in the U. S. A. Though corruption and abuses exist in the Canadian political party system as well, yet these have not been so oppressive as in the U S. A. The Canadian parties are also controlled by big interests like industrialists, manufacturers and wine merchants. Elections are controlled by them and they are compensated for their contributions. Candidates have not much choice or freedom. They have to follow the planks laid down by the party convention. These planks or platforms are not manifestos issued by the candidate, but manifestos prepared by men with worthy ideas but little practical experience. The result is that the leaders chosen find themselves continually embarrassed and in difficulty as how to give effect to these 'planks'. There has been a controversy as to whether the candidate, after he has been elected, is bound by such 'platform' or not. Mr. W. D Euler, the then finance minister, speaking in the House of Commons in May 1923, expressed the view that the leaders, after thev are elected, are not bound by 'planks' in party platform. He says: "I do not believe that a government or members elected to the responsibility of a seat in the house should necessarily be asked to accept what may be ill-digested planks in any platform imposed upon them by people who come from various parts of the country, and whose suggestions are probably as much dictated by political expediency as anything else; I do not believe that men who represent the public should be expected to carry out such ill-considered behests on the floor of this house." Mr. Arthur Meighen, on the other hand, opposed this view and expressed that the leaders should be bound by the party platforms and carry them into effect. According to him if these party platforms are proved to have any meaning and are constructed not only to be discarded, they should be given effect when the power is gained, otherwise responsible government is a mockery, public life is a sham and representative institutions are no better than a fiasco." Mr. Mackenzie King, the then prime minister, expressed a midway and a better opinion. According to him, the party platform is "a chart on which was plotted the course the liberal party was expected to take. I said that I would not seek to follow it literally, that I felt it would be unwise to do so." The leaders need be bound only by the general policy laid down in the platform and not in every detail. The general policy also may have to be modified and changed according to the times and needs. However, in

essential, they must follow the general principles laid down in the platform.

In Canada, until recently, there has been a two party system as was the case in England, the two parties being liberal and conservative. However, during the last few years some new small parties—Co-operative Commonwealth Federation, Reconstruction, Social Credit, United Farmers and Independent —have grown up. These parties have little influence in the house of commons and perhaps no seat in the senate.

Political parties in Canada are not so well centrally organised as in England. In this respect they resemble American political parties more. There is no permanent central organisation; nor they have any fundamental difference in their platforms. The parties assemble at the time of elections to occupy as many seats as possible and share in "pork barrel'. In Canada, political parties are "really loose federations of local provincial or state machines held together chiefly by a common desire to share in the 'pork barrel'. It is in the structure of our parties that the most important federal element of construction appears."[1] To borrow the language of W. B. Munro, a Canadian political party is nothing but a bundle of factions held together by the elastic bond of the common nomenclature." The change in administration *i.e.*, from conservative to liberal makes no difference. The policies followed by both the administrations are nearly the same. It is not the party differences that affect the administration, but different sections and interests within a single party. Due to the vast territory of Canada, there is a great diversity in the interests represented in a party. In both the parties, there are radicals as well as conservatives. The result is a compromise. "Our two national parties are clearing houses in which different sectional and economic interests negotiate such practicable compromises and bargains as appear likely to bring them closer to the enjoyment of office." Hence not much difference in th programme.

Programmes of the Parties.[2] **Liberal Party.** The liberal party has its hold mostly in French-speaking Canada and therefore, in the province of Quebec, and also in the prairie provinces. The liberal party believes in low tariffs, upholds provincial rights and asserts Canada's sovereign status with the other members of the commonwealth. It supports public ownership of railways, rapid broadcasting. However, it does not want to interfere very much in the economic life of the country. Nor has it ever decreased the tariffs to any considerable extent, while in office. It is opposed to most-favoured-nation treatment accorded to the members of the British commonwealth at Ottawa. It favours reciprocal trade agreements with nations both within and without the British Empire.

1. Franks; H. Underhill, "Canadian Forum" March 1929, p. 199 to p. 351.

2. Mallory, W. H.: Political Handbook of the World, (1939), p. 24–26.

Some of the most important leaders of the party are: W. L. Mackenzie King, Raul Dandurand, Thomas Acrerar, Ernest Lapointe, Charles A. Dunning, J. E. Elliott, and Norman Mcl. Rogers.

Conservative Party. It believes in high tariffs as a protection to Canadian Industry. It negotiated the Ottawa agreements and took steps to extend the principle of bargaining tariffs in proposals made to other countries, notably the U. S. A., so as to get the largest concessions in markets which are likely to absorb Canada's primary products. It favours more state intervention in the economic life of the dominion in order to ensure the operation of industries in public interest. It advocated co-operative marketing of natural products to secure consumers from exploitation. It advocated other measures like unemployment and social insurances and the enforcement of minimum wages, maximum hours of work and the abolition of child labour.

Some of the most important leaders of the party are: Dr. R J. Manion, R. B. Bannett, Arthur Meighen, C. H. Cahan, H. A, Stewart and Denton Massey.

Co-operative Commonwealth Federation. It consists of farmers, socialists and labourers. It was organised in 1932. It believes in planned and socialised economy. It advocates socialization of all banking and financial machinery, initiation of large scale programme of public works; national minimum wage, maximum hours and social insurance; maintenance of Canadian neutrality in imperialist wars; reorganization of the League of Nations.

Its leaders are M. J. Coldwell and J. S. Woodsworth.

QUESTIONS AND TOPICS

1. What are the chief features of the political parties in Canada.
2. Compare and contrast the programme of the Canadian liberal and conservative parties with that of the English liberal and conservative parties.

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CHAPTER 35

THE GOVERNMENT AND POLITICS OF INDIA.

THE GROWTH OF INDIAN POLITICAL SYSTEM.

Introductory. The present constitution of India is the result of a continuous growth for nearly the last two hundred years. During this period India has passed through many phases. She has seen the fall of the once great Mughal Empire, the efforts of the successors of that empire to establish their sway and the consequent division of India into numerous kingdoms and petty states constantly at war with each other; and lastly, the immense efforts of the European nations to bring India under their rule. The history of the efforts of the European powers to subjugate India presents us with the depressing story of a long drawn out struggle between Indian patriotism to fight for its very existence and the struggle of the European people to establish their sovereignty by fomenting hatred and quarrels between Indian rulers and then making a tool of them for their own purpose. From this struggle among many European powers—the Dutch, the French, the Portuguese and the English—the English emerged triumphant and that group of swindling Englishmen known as the East India Company though formed in 1600 for purposes of trade only with the East including India became a political power ruling over an extensive territory acquired in India.

The Career of the East India Company. The East India Company was originally formed to carry on trade with India but the chaos which followed the crumbling down of the Mughal Empire tempted them to acquire territory in the vicinity of their factories, if for no other reason than at least to protect their goods and themselves from the attacks of their neighbours who could not be said to possess any peaceful intentions. The English had three main factories at this time Madras, Bombay and Calcutta—but they had no common plan of action. Each factory under its governor or president followed its own plan. Lack of means of communication, difference of circumstances in the different parts of India and the interception of extensive 'unfriendly tracts' did not allow these main factories to chalk out and act upon a definite plan of action. They were at their wit's end when Clive laid the foundation stone of the Company's Indian Empire on 23rd June 1757 by defeating Nawab Siraj-ud-Doulah at Plassey. By the victory of Plassey the Company gained virtual control over the Nawab of Bengal and by playing at Nawab-making for about a decade the Company specially its Bengal branch acquired a very important position not only in the province of Bengal but in the whole of India. The Company had still to pass through critical times till the Battle of Buxar (1764). The victory of Buxar not only strengthened the foundation laid at Plassey, but gave the English control over the

then tottering Mughal Empire of Delhi. The Treaty of Allahabad (1765) conferred the grant of Diwani of Bengal and the neighbouring provinces on the Company, and recognised it as a territorial power The career of the East India Company as a trading concern may be said to have come to an end by 1765, because from 1765 to 1858 the Company was transforming itself from a trading company to a political body. From 1765 onward there were two main tendencies at work. Firstly by intrigue, war and a complete disregard of the Indian laws of adoption and inheritance, the Company gradually but definitely extended its authority over other parts of India ; in other words British India grew more extensive and the area of the Indian states became more circumscribed. This ruthless policy of the Company for territorial expansion aroused a widespread discontent and was the fundamental cause of the 1857 mutiny. Secondly there was a steady growth of interference on the part of the British parliament in Indian affairs which in 1858 culminated in the final transfer of the government from the East India Company to the Crown.

System of Government under the Company. So far we have traced the historical development of the rule of the Company ; but what about its machinery of government? Under the provisions of the original charter (1600) the machinery of government in England (so-called home government of India) was composed of a General Court of stockholders, a Governor, and twenty-four committees. These committees were not committees in the modern sense of the term ; they were twenty-four individuals who made up a Board of Court of Directors. In the eighteenth century the General Court came to be called the Court of Proprietors. The Directors were elected by the Proprietors who had the authority to override their proceedings, It was due to the overwhelming powers of the proprietors that Warren Hastings was kept in office by the proprietors in opposition to the directors.

In India the local administration of the Company was decentralised. Each of the three presidencies—Bombay, Madras, and Calcutta—had its own president or governor and a council consisting of twelve to sixteen members and usually appointed according to the rule of seniority. The president had no special power and was on a par with the members of the council. All matters were decided by a majority vote. Each presidency was independent of the other ; but all the three were subordinate to a common master, the Court of Directors, in England.

This system proved successful so long as the business of the Company was purely mercantile in character, but its weakness and defects were betrayed during the struggle with the French from 1744 to 1763 and it proved entirely inadequate after the company was granted the Diwani 'administration' of Bengal (1765). By the grant of Diwani the Company was called upon to govern a vast territory. It was partly due to this change in the character of the Company and partly to the chaotic condition of the finances of the Company that parliament made

a series of inquiries which finally culminated in the passing of the Regulating Act (1773).

The Regulating Act did not make any special change in the Company's government in England, but introduced important changes of far reaching character in the administrative machinery in India. The Act took the first step towards centralisation of authority and provided for a governor-general and four councillors for the Bengal Presidency with power to exercise general control and supervision over the presidencies of Madras and Bombay. The last named presidencies were prohibited to wage war or to conclude treaties without obtaining the previous sanction of the governor-general-in-council. The governors of these presidencies were also required to obey the orders of the governor-general in-council and to keep him well posted on all important matters. The first governor-general and council were not chosen either by the Court of Directors or by the Court of Proprietors, but by the Parliament for a period of five years[1] and nominations in the future, though made by the Directors were to be subject to the approval of the Crown.

Further under the provisions of the Act a Supreme Court of judicature at Calcutta was also established. The Court consisted of a chief justice and three puisne judges appointed by the Crown. The court had jurisdiction over the employees of the Company, British subjects and the inhabitants of Calcutta.

The Regulating Act suffered from two serious defects. In the first place the majority of the council could override the governor-general, and secondly the governor-General and the council together could be overruled by the Supreme Court. The quarrel between Warren Hastings and Philip Francis and his followers is known to every school boy, but the conflict between the Supreme Court and the governor-general-in-council was more fundamental. The Supreme Court of Judicature was vested with the supreme judicial authority, the governor-general-in-council with supreme administrative authority. No attempt was made in the Act to delimit and define their respective fields of activity and neither was definitely authorised by the Act to have the last word in cases of conflicting jurisdiction. The Supreme Court represented the Crown and the governor-general-in council represented the Company. It is true that the Company ultimately derived all authority from the Crown. but the territory under its governance was not then a British possession. The Mughal Emperor at Delhi still possessed the full rights of sovereignty. Thus the Company was an agent of the Moghul Emperor and as such it was natural for it to be "unwilling to have its work subjected to review by a British Court." One of the important issues in this conflict was that Supreme Court made a vigorous effort to protect the Indian people against the oppression of the officials of the Company

1. Perhaps this is the origin of the practice that limits the tenure of office of the governor-general of India to five years though no limitation is imposed either by the commissions of appointment or be statute.

The conflict between the judiciary and the executive was practically settled in 1781 by an Act of Parliament which decided all important disputes in favour of the executive and deprived the judiciary of the power to create any trouble in the future. Another important feature of the Regulating Act was that it required the governor-general to send to the Court of Directors a complete and full account of the transactions and relations of the East India Company in India. And in order to give Parliament the right to know all transactions it was provided by the Act that "the Court of Directors of the said Company, or their successors, shall and they are hereby directed and required, from time to time before expiration of fourteen days after receiving any such letter or advices, to give in and deliver unto the High Treasurer, or Commissioners of His Majesty's Treasury for the time being, a true and exact copy of such parts of the said letters or advices as shall any way relate to the management of the revenues of the said Company: and in the like manner to give in and deliver to one of His Majesty's principal Secretaries of State for the time being a true and exact copy of all such parts of the said letters or advices as shall in any way relate to the civil and military affairs and government of the said Company; all such copies shall be signed by two or more of the Directors of the said Company."

But the Company's administration in India was too notorious to be reformed by such an act as the Regulating Act, and another Parliamentary Act known as the Pitt's India Act of 1784 was passed 'for the better government and security of the territorial possession of this kingdom in the East Indies... " The passing of the Pitt's India Act, 1784 was the first step on the part of the British Parliament to interfere with the home administration of Indian affairs. The Act set up a Board of Control of six members appointed by the Crown with power "to direct all operations relating to the civil and military government and revenues of India." The Chancellor of the Exchequer and one of His Majesty's principal secretaries of state were to be two of the six members of the Board. The Act vested in His Majesty the final word in ease a conflict arose between the Board of Control and the Court of Directors as to whether a partical matter fell within military or civil affairs. By clause xxii the Act authorised the king to recall a governor-general. But clause xxxi contained the most important provision of the Act which declared that "the Governor-Generai and Council of Fort William aforesaid will have power and authority to superintend, control and direct the several presidencies and governments now or hereafter to be erected or established in the East Indies by the sajd United Company in all such points as relate to war or peace, or to the application of revenues or forces of such presidencies and settlements in time of war or any such point as shall, from time to time, he specially referred by the Courts of Directors of the said Company to their superintendence and control." This Act was an attempt to bring the possessions of the Company in India under a single system

of administration. It vested authority in certain important matters in the governor-general and his council, who may be said now to have assumed the character of a central government in India. The authority of the presidents or governors and their councils of Madras, Bombay or any other subordinate settlements was restricted by the Act.

Under the provisions of the Act the governor-general came to possess a dual character and had a double duty to perform, "firstly his duties as exercising the executive authority of the government of the British possessions in India, secondly, his duties as the chief representative of the Company in India in their commercial capacity."

It may be said that the government of India was based upon Pitt's India Act, 1784, with certain modifications, until the supervision of the Company by the Crown in 1858. The more important changes made in the affairs of India during this period were embodied in a series of acts passed every twenty years by parliament for the renewal of the Company's charter (1793, 1813, 1833, 1853). In 1786 the governor-general was empowered to overrule a majority in his council and to act on his own responsibility in special cases. Another statute was passed in the same year revoking the power of the Crown to veto the nomination of a governor-general, though the right of recall was maintained and the right to veto was also restored in 1813 The Company gradually lost its commercial privileges. The 1813 Act deprived it of the monopoly except with regard to tea and the China trade, and it was compelled by the 1833 Act to give up entirely its commercial business and to become purely a political and administrative body and to act as a trustee for the Crown.

In its social and political aspects the 1813 Act may be said to be a landmark. It threw open the trade with India to all and sundry—traders, planters, and other European adventurers—inspite of the angry protests of the Directors of the Company. It also legalised the entrance of Christian missionaries into India.

The Charter was again revised in 1833 and the Charter Renewal Act (1833) introduced many important changes in the governmental machinery of India. It deprived the governments of Madras and Bombay of their powers of legislation, thus completing the process of centralization. The logical result of this change was that the Governor-General of Fort William (Bengal) was given the full title of the Governor-General of India. He remained in direct control of the government of Bengal until 1854 when a separate lieutenant-governor was appointed for that presidency; but inspite of this change the provincial government of Bengal continued to be overshadowed by the central government until 1912 when Calcutta was forsaken and Delhi was made the capital of India.

Before 1833 there did not exist any separation between executive and legislative bodies. The same set of men—the

governor-general-in-council in Bengal, and the governors-in-council in Madras and Bombay—made as well as enforced laws. The 1833 Act retained the provincial councils though it deprived them of the legislative powers and empowered governor-general-in-council to legislate for the whole of British India. A law member was also added to the governor-general's council. The new member took an active part in the proceedings of the council when it met as a legislative body, but did not possess the right of vote when it met as an executive body. The Law Member was granted a regular seat on the executive council of the governor-general by the 1833 Act, the principle of separation was maintained and strengthened by the appointment of six additional members in the executive council who could attend its sessions only when it met for legislative business.

The 1833 Act also made provision for the appointment of a Law Commission to investigate into the question of jurisdiction, powers and rules of the then courts of justice into the form of judicial procedure as well as into the nature and practice of all civil and criminal laws—written and unwritten—that were prevalent in India. This was the genesis of the commission which prepared the Indian Penal Code (1860) and took the preliminary steps for the preparation of the civil and criminal procedure code.

The Act of 1833 made another provision honoured more in its breach than in its observance, according to which "no native of the said territories, nor any natural-born subject of His Maiesty resident therein, shall by reason only of his religion, place of birth, descent, colour, ot any of them, be disabled from holding any place, office or employment under the Company."

The result of the dual administration established under the provisions of the Pitt's India Act, 1784 was that there was not only constant friction but also a division of responsibility between the Court of Directors and the Board of Control, the natural consequence of which was lack of efficiency. It was due to these and other considerations that the charter was renewed in 1853 for not a period of twenty years as had been the case hitherto, but only "until parliament shall otherwise provide."

The Act of 1853 effected three important changes: firstly, it provided that one-third of the members of the Court of Directors were to be nominated by the Crown, and the remaining two-thirds were to be elected by the holders of East India joint stock which any one could purchase in the open market. This was another encroachment by the parliament upon the ruling powers of the East India Company.

Secondly, as has been observed, the governor-general was released from his additional duties of administering Bengal for which a separate lieutenant-governor was appointed.

Thirdly, the Supreme Council in the Presidency of Bengal was made the legislative council for the whole of India with increased membership.

At this time the Company also gave up all pretences of being faithful servants or well-wishers of the Mughal Emperor at Delhi, and assumed full powers of sovereignty to the extent of according recognition in 1856 to the Emperor's grandson as his heir-apparent "only on condition that he should quit the palace in Delhi in order to reside in the palace in the Qutub; and that he should as king, receive the governor-general of India at all times on terms of perfect equality."

The arrangement of Indian affairs as introduced by the Act of 1853 lasted for less than five years when the Mutiny broke out. While the ashes of this tremendous revolution were still smouldering the British Government decided to put an end to the rule of the Company and transfer the responsibility of governing British Indian possessions to parliament. Accordingly inspite of the remonstrances of the Directors a bill was introduced by Lord Palmerstone in the parliament on 12th February, 1858 for transferring the government of India from the Company to the Crown. The Act of 1858 abolished once for all the rule of the East India Company in India, and the British sovereign assumed the direct responsibility of ruling over a people who were truly proud of their civilisation, culture and art. During a century of the Company's rule (1757—1857) the state of things had been most deplorable. The Company had one object in view which was to make as much profit as possible so as to declare increased dividends to its stock holders.

Under the Crown. The constitutional history of India since 1858 may be divided into three parts :

(1) From 1858 to 1921.
(2) The Montagu-Chelmsford Reforms and
(3) The making of the new constitution of 1935.

1858—1921. During this period the organic law of British India was contained in a series of statutes enacted by the British parliament. The most important of these were the Government of India Acts, 1858, 1865, 1869, 1870, and 1912; the Indian Councils Acts of 1861, 1892, and 1909; and the Indian High Courts Acts of 1861 and 1911. The important provisions of these statutes and of many other measures were consolidated in a measure passed by the British parliament and called the Government of India Act, 1915. The Government of India Act 1915 was amended by the Government of India Amendment Act 1916 which was considerably modified by the Government of India Act, 1919 which contained the Montagu-Chelmsford Reforms. In accordance with section 45 of the Government of India Act, 1919, the Acts of 1915, 1916, and 1919 were put together into the document which was cited as the Government of India Act, 1919. This document was only an outline, the details were filled in by the governor-general-in council with the approval of the secretary of state for India in council. The Government of India Act, 1919 has been superseded by the new Government of India Act, 1935 in

the provinces and is to replace the old Act gradually in the central government.

During this period the governance of India was carried on according to the various measures, mentioned above, passed by the British parliament. We will now notice briefly the system set up or modified by the more important of these measures.

The passing of the 1858 Act transferred the responsibility for the governance of British India from the East India Company to the crown. All those powers and sovereign rights which the Company enjoyed till then passed *ipso facto* to the crown. As a result of this change the actual administration of India was to be conducted on behalf of the crown by a principal secretary of state designated the Secretary of State for India and an India Council consisting of fifteen members (eight nominated by the crown and seven elected by the Court of Directors. The Company was formally dissolved from 1st January 1874, by an Act of Parliament).

The taking over of the Government of India by the crown was proclaimed to the Indian people by the Queen's Proclamation (November 1, 1858) which according to some writers is the first charter of Indian liberties under the British rule in India.

The pledges and promises given in the Queen's Proclamation have not been faithfully observed and in fact have been violated throughout the British rule in India. A few extracts from the proclamation will bring home to the reader the truth of what has been said above.

> "We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by us accepted, and will be scrupulously maintained: and we look for the like observance on their parts.
>
> "We shall respect the rights, dignity and honour of Native Princes as our own.
>
> "We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil.
>
> "And it is our further will that, as far as may be, our subjects of whatever race or creed be freely and impartially admitted to offices in our services, the duties of which they may be qualified by their education, ability and integrity duly to discharge.
>
> "Firmly relying ourselves on the truth of Christianity. and acknowledging with gratitude the solace of religion, we disdain alike the right and the desire to impose our convictions on any of our subjects.

> We declare it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith and observances but that all shall alike enjoy the equal and impartial protection of the Law.
>
> "We know, and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors; and we desire to protect them in all rights connected therewith, subject to the equitable demands of the state; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.
>
> "When by the blessing of Providence, internal security shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer its government for the benefit of all our subjects resident therein. In their property will be our strength; in their contentment our security; and in their gratitude our best reward. And may the God of all power grant to us, and those in authority under in strength to carry out these our wishes for the good of our people."

How far these principles hove been observed by the rulers of India is known to every Indian and therefore no comment is needed to explain the extent to which they have been adhered to by the Britith in their policy towards India.

After the passing of the 1858 Act all revenues of India were to be received in the name of the crown who was also given the right to appoint the governor-general, the governors and the advocate general, while the lieutenant-governors were to be appointed by the governor-general.

The Secretary of State for India, according to section xxv of the Act, could over-rule the majority in his council in a few matters only. The following were the other important changes made by the Act :—

(*i*) The expenditure of the revenues of India was made subject to the council of the Secretary of State-in-Council, a majority prevailing in case of difference of opinion.

(*ii*) The Secretary of State-in-Council would sue or be sued in the behalf of Her Majesty as a corporate body.

(*iii*) All treaties made by the Company were binding on Her Majesty and all contracts, covenants, liabilities, and engagements of the Company made, incurred, or entered into before the commencement of the Act were to be enforced by and against the Secretary of State-in-Council in like manner and in the same Courts as they might

have been by and against the Company if the Act had not been passed.

Act of 1861. The system of administration set up by the 1858 Act was completed by the Government of India Act, 1861. So far the legislative power was centralised in the governor-general and his council only with an additional law member who could sit and speak in the council but could not vote In 1833 the presidencies of Bombay and Madras were deprived of their legislative powers, but it was now (1861) felt that with the extension of territory the executive alone even with the help of the law member was unable to meet its obligations of law making. Accordingly the Act of 1861 not only created an enlarged central legislative body by adding additional members to the executive council of the governor-general but also restored legislative powers to the presidencies of Madras and Bombay. The Act further empowered the governor-general to create legislative councils for the North-West Provinces and the Punjab whenever he deemed it necessary. He was further empowered to create new provinces out of the old ones which had been formed "haphazardly for purposes of administrative efficiency," and to allow their legislative councils after obtaining the approval of the crown.

According to the provisions of the Act the governor-general and the governors nominated to their councils respectively a certain number of non-official members, either Indians or Britishers, who held their seats for a period of two years.

The Act further restricted the powers of the provincial legislatures by providing that they could not make regulations or enact laws without the previous sanction of the governor general on any of the following matters :—

(1) Affecting the public debt in India, or the customs duties or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such government ;

(2) Regulating any of the current coins, or the issue sf any bills, notes or other paper currency ;

(3) Regulating the conveyance of letters by the post office or messages by the electric telegraph within the presidency ;

(4) Altering in any way the penal code of India, as established by the Act of the governor-general in council No. 42 of 1860 ;

(5) Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India ;

(6) Affecting the discipline or maintenance of any part of Her Majesty's military or naval forces ;

(7) Regulating patents or copyrights ;

(8) Affecting the relations of the government with foreign princes or states.

Under the provisions of the Act the local legislature to be created by the governor-general was made subject to two more restrictions. Firstly, all laws passed by these legislatures were to receive the assent of the governor-general who could reserve any of them for the assent of the crown. Secondly, they were very much handicapped in matters of finance; their budgets were to be submitted to the governor-general-in-council who in his turn was dependent upon the secretary of state-in-council.

In the sphere of the central government the powers of the governor-general and his council were also limited inasmuch as the laws passed by them were to receive the assent of the crown and could be annulled. This was considered necessary in view of the fact that the Government of India was only a subordinate branch of the British Government. But in practice these restrictions were not applied rigidly and the Government of India enjoyed much latitude.

In the field of finance, the Government of Indio maintained its control over all revenues till Lor Mayo formulated a scheme (published in the Government of India Resolution of December 14, 1870) according to which the provinces were to administer the departments of jail, police, registration, education and medical for which an annual lump sum grant of Rs. 4,68,87,110 was given them, in addition to all income they derived from these departments. In 1877 the administration of law and justice, land revenue, stamps, excise. stationery and printing, and general administration was also transferred to the provinces, and to meet their increased expenditure they were allowed a share in the revenues derived from excise, stamps, license tax, law and justice fees, and the income derived from minor railways.

The Act of 1861 remained for full three decades the statute law of India. During this period great changes had taken place. The Indian National Congress had been established (1885) and many other private societies had spread political and general awakening in the country. The British Government feeling the effect of changed conditions passed the Indian Council's Act of 1892.

Indian Council's Act, 1892. The object of this Act, as explained by George Nathaniel Curzon in a speech in the House of Commons was " to expand the functions of the Government of India ; to give further opportunities than at present exist to the non-official and native elements in Indian society to take part in the work of government, and in this way to lend official recognition to that remarkable development both of political interest and political capacity which has been visible among the higher classes of Indian society since the governmeut of India was taken over by the Crown in 1858."

Under the provisions of this Act the governor-general, the governors, and the lieutenant-governors were given very general

powers to increase the number of non-official members in their legislative councils within certain specified limits. For example, clause 3 of section 1 of the Act provided; "Any person resident in India may be nominated an additional member of the Council under sections ten and twenty-nine of the Indian Councils Act, 1861, nnder this Act or a member of the council of the lieutenant-governor or any province to which the provisions of the Indian Councils Act, 1861 touching or making of laws of regulations have been or are hereafter extended or made applicable:" In simple words it means that not only Indians could be nominated to the various legislatures, but there was also a provision for the election of these members only if the heads of provinces cared to do so. The words of the Act were purposely left vague so as to enable the heads of provinces to interpret them in their own way. Technically the nominating bodies were merely recommending agencies. But the most important provision of the Act from the Indian non-official point of view was that (section 2) which authorised a general discussion of the budget [there was no voting of the demands yet] and which conceded to non-official members the right of interpellation.

The later period is noted for the countrywide political discontent created by Lord Curzon's administration and which in Bengal assumed the form of political crimes. It was under the pressure of such circumstances that the British Government in order to pacify Indian public opinion decided to introduce political reforms in India.

The Morley-Minto Reforms. The necessity of a liberal administration in India was recognised and the Government of India Act, 1909, embodying the new reforms was passed. The new Act is called after the names of Lord Morley (the then secretary of state for India) and Lord Minto (the then governor-general of India).

According to the provisions of the Reforms Act of 1909 the constitution of the Councils was changed in three aspects;

(1) Numbers.
(2) Proportion of official and non-official members, and
(3) Methods of appointment or election.

Numbers. Under the Act of 1909 the numbers were doubled or in some cases even more than doubled. For example, under the Act of 1892 the maximum number of additional members in the Punjab Council was 15 but under the Act of 1909 this number was raised to 30; again, in the United provinces it was 15 under the old Act while under the new it was raised to 50.

Proportion of official and non-official Members. According to the provisions of the Act of 1861 at least one-half of the additional members of the central legislative council and of the legislative councils of Bombay and Madras, and to least one-third of the members of the legislative councils

of other provinces had to be non-officials. No official majority was required by statute, but it was always maintained in practice before the Act of 1909 in all the provincial councils with the exception of Bombay.

Under the Regulations of 1909 and 1919 an official majority was required to be maintained in the central egislative council and a non-official majority in the legislative councils of the provinces.

The importance of the distinction between the two classes—official and non-official—members arose out of the constitutional view that all official members were obliged to vote for the government on all government measures. The governments in the provinces were subordinate to the central government which in turn was subordinate to parliament through the secretary of state for India. Whatever measure the Government of India introduced in the central legislature was either in accordance with the instructions of the secretary of state for India or with the decision of the executive council of the governor general. Therefore not only the members of the governor-general's executive council, but also the officials who had been nominated as members of the council by the government were bound to support the measure and vote with the government and to oppose any amendments which were frowned upon by the government. This principle was clearly laid down by the late Lord Elgin in the debate on Cotton Duties Bill in the central legislative council in December 1894. He said that offical members of the legislature can not enjoy either freedom of speech or vote in the council so long as they are responsible to the government which nominated them. He went on to say that "only in an entirely irresponsible body can members act entirely as their inclination leads them. In every legislative body a man must sit, unless he has an hereditary right, by what in modern parlance is called a mandate, and that mandate must be given by some authority. I need not remind you that in a parliament a man is not free to act exactly as he pleases, he is distinctly subject to the mandate he has received from his constituents, and practice has shown that even this is not sufficient; but to make parliamentary government effective, it has been found necessary to introduce party management, and the bonds of party, in the present day, certainly show no sign of being relaxed. Here we have no election and, I am glad to say, no party, but every man who sits here sits by the authority and sanction of parliament, and to say that he can refuse to obey the decisions of parliament would be absurd." Hence discipline demanded from the offical members to vote according to the dictates of the government. And an official majority in the governor-general's council was retained because Lord Morley held and laid it down that the governor-general's council "in its legislative as well as executive character should continue to be so constituted as to ensure its constant and uninterrupted

1. Quoted by Sapre, B. G. : The Growth of Indian Constitution and Administration, (1929), p. 250.

power to fulfil the constitutional obligations that it owes, and must always owe, to His Majesty's government and to the imperial parliament." But in the provincial councils an official majority was not rigidly required because certain safeguards were available to the governor or governor-general. For example, they could exercise on occasion the power of veto; further there were certain statutory limitations on the powers of the provincial legislative councils, and finally the Indian Legislative Council with its official majority possessed concurrent powers of legislation.

Method of Appointment or Election. Under the provisions of the Act of 1861 all the "additional" members were nominated: the only restriction was that a due proportion of non-official members should be maintained.

The principle of indirect election was recognised by the Act of 1892. The regulations made under the Act enabled certain recognised associations and bodies to recommend persons who were generally accepted though there was no obligation on the part of the government to do so.

Under the Reforms of 1909 the additional members must include nominated members as well as members elected in accordance with regulations made under the Act.

In the matter of the principle of representation the government of Lord Minto came to the conclusion that (*a*) "election by the wishes of the people is the ultimate end to be secured, whatever may be the actual machinery adopted for giving effect to it," that (*b*) "in the circumstances of India representation by classes and interests is the only practicable method of embodying the principle in the constitution of the Legislative Councils." And in support of this decision Sir Charles Aitchison, who had been a member of the Executive Council in 1892, was quoted to the effect that "the division of the people into creeds castes, and sects with varying and conflicting interests rendered representation in the European sense an obvious impossibility" Therefore it was said that no uniform system was possible and class or communal representations were created. Separate representation was granted to the Muslims, and to the large land owning interest.

Changes in the functions of the Councils. Along with the changes in the constitution of councils changes in their functions were also introduced by the Reforms of 1909. As has been noticed, according to the Act of 1861 the councils had only one function to perform *viz.*, that of legislation. The 1892 Act allowed the members to discuss the budget but they could not move resolutions about it nor could ask for a division; and in practice one or two days were allotted by the Government for the discussion of the budget. But under the Act of 1909 the councils were empowered—

(A) 1. to discuss the budget at length before it was finally settled;

2. to propose resolutions upon it; and

3. to divide upon those resolutions. Not on the budget, alone, but

(B) on all matters of general public importance resolutions might henceforth be proposed and divisions taken. These resolutions were to be merely in the nature of recommendations to the Government. There were certain matters, *e g.*, native states, on which no resolutions could be moved; the head of the government might disallow any resolution without giving any reason except that in his opinion the resolution could not be allowed to be moved in the public interest.

(C) At the same time the right of the members to ask questions was enlarged by allowing them to ask supplementary questions.

The Minto-Morley Reforms of 1909 though considered an improvement on the Act of 1892 failed to satisfy the political aspirations of the Indian people The reasons were not far to seek. The councils were not only defective in their constitution but also were not properly representative of the whole people. Indirect elections and restricted franchise failed to inculcate any sense of responsibility in the members. The councils did nor possess any real powers either in finance or in legislation. The control of the Secretary of the State for India over the Government of India and of the latter on the provincial governments was not relaxed. The Indian National Congress expressed the gravement of the charge in the resolutions which it passed in 1909 dealing with the Reforms. By the first resolution it recorded its sense of disapproval of the creation of separate electorates on the basis of religion; it expressed dissatisfaction at

"(*a*) the excessive and unfairly preponderant share of representation given to the followers of one particular religion;

(*b*) the unjust, invidious and humiliating distinction made between Muslim and non-Muslim subjects of His Majesty in the matter of electorates, the franchise and the qualifications of candidates;

(*c*) the wide, arbitrary and unreasonable disqualifications and restrictions for candidates seeking election to the Councils;

(*d*) the general distrust of the educated classes running through the Regulations; and

(*e*) the unsatisfactory composition of the non-official majorities in the provincial councils, rendering them ineffective and unreal." [1]

But on behalf of the British it must be pointed out that the councils were not intended in any sense to be a step towards

1. Sitaramayya, B. Pattabhi. The History of the Congress, (1935) p. 41.

responsible government. Indeed Morley himself stated of the reforms: "If it could be said that, this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it." But the verdict of Montagu and Chelmsford as embodied in their report on these reforms of 1909 is more authoritative: "They have ceased to satisfy Indian opinion, and their continuance can only lead to a further cleavage between the Indian members and the Government and a further cultivation of criticism unchecked by responsibility." Finally we may conclude that the reforms of 1909 could not afford an answer to Indian political problems. They could not encourage any sense of responsibility in the exercise of the vote. They kept the responsibility for administration undivided. The councils could merely criticise while the real power remained with the government. In fact they were the final outcome of the old conception which made the government of India a benevolent despotism tempered by a "remote and only occasionally vigilant democracy" and no wonder that Indians were soon disillusioned.

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Chapter 36.

THE REFORMS OF 1919.

In the last chapter we considered how neither the principle of decentralization nor of association embodied in the Morley-Minto Reforms succeeded in satisfying the Indian public opinion. It is now time to turn to the Reforms of 1919 associated with the names of Montagu and Chelmsford. The Reforms of 1919 were introduced in recognition of the sacrifices in men and money of India to save the Empire in the last war (1914 - 1918) and it was in recognition of these services that Montagu, the then secretary of state for India made his historic pronouncement on August 20, 1917 in the House of Commons. Montagu said, "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire.....I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

The Act of 1919. This Announcement was followed by Montagu's visit to India. The secretary of state and the viceroy toured all over the country, and met the leaders of Indian public opinion. Their proposals were published in July 1918. The Government of India Bill was introduced in the House of Commons on June 2, 1919, and was referred to a Joint Select Committee after its second reading. The Report of this Joint Select Committee is a document of first rate importance. The Bill was amended in accordance with the recommendations of the Joint Committee, and was passed by the parliament and received royal assent on December 23, 1919.

Meaning and significance of the Announcement. Returning back to the consideration of the August Announcement (1920) we may say that, according to Lord Chelmsford, it had three features : (1) The progressive realization of Responsible Government was given as the key-note and objective of the British policy in India ; (2) substantial steps were to be taken in that direction at once ; (3) that policy was to be carried out by stages ; or shortly "the gradual transfer of responsibility to Indians."

The Announcement of August definitely gave up the old conception of the British Government as a 'benevolent despotism

and adopted in its place the conception of the British Government as a guide whose role it would be to assist and guide India on the road to complete self-government within the British Empire. As the king said in the proclamation announcing the Reforms of 1919 : " There is one gift which yet remains, and without which the progress of a country cannot be consumated—the right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is the duty of common Imperial interest and pride. The control of her domestic concerns is a burden which India may legitimately aspire to take upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength ; but opportunity will now be given for experience to grow and for responsibility to increase with the capacity for its fulfilment."

On the way to Responsible Government. Thus the Reforms embodied in the Government of India Act, 1919 bound England to guide and lead India on the highway to responsible government. The Reforms of 1919 had three salient features :

Firstly, the control of the secretary of state for India over the Government of India, at a distance of six thousand miles from London, was to some extent relaxed and the Government of India was granted larger freedom of action.

Secondly, the relations between the Government of India and the provincial governments were more clearly defined by the assignment of definite functions of government to each. A clear cut division of subjects of administration into central and provincial subjects was made. This may be taken as a step, more or less definite, towards the introduction of federalism in India. And as a necessary consequence and corollary of the above certain sources of revenue were definitely made over to the government of the provinces.

Thirdly, a certain measure of responsible government was introduced in the provinces. This is considered to be the most important feature of the 1919 Act. While the Central Government of India continued to remain as irresponsible and perhaps as irresponsive to Indians as before, the subjects in the provinces were further divided into what came to be termed as ' transferred subject ' and ' reserved subjects,' the former forming the sphere of 'responsible government in the provinces. This system of provincial government came to be known as ' dyarchy.'

The formula enunciated by Montagu and Chelmsford in their report for implementing the new policy had four aspects :—

1. " There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control " (Para. 123 of the Report.)
2. " The provinces are the domain in which the earliest steps towards the realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give

complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence—legislative, administrative, and financial—of the government of India which is compatible with the due discharge by the latter of its own responsibilities.

3. "The government of India must remain wholly responsible to parliament, and saving such responsibility its authority on essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing government increased.

4. "In proportion as the foregoing changes take effect, the control of parliament and the secretary of state over the government of India and provincial governments should be relaxed."[1]

The working of Reforms and the failure of Dyarchy. We now proceed to discuss the general features of the Reforms of 1919 and their working.

The Home Government of India. The 1919 Act did not contemplate any important and useful changes beyond the sphere of provincial governments. Therefore little change was effected in the powers of the secretary of state for India and the India Council. The India Council, the abolition of which had been demanded for long by Indian public opinion was allowed to remain as before except that a little change was made in its strength. Formerly its maximum strength was fourteen and minimum ten, but now its maximum and minimum were reduced to twelve and eight respectively; of this number at least three were to be Indians. Thus Indians were allowed this small opportunity of increasing association with the branch of administration conducted from England.

The salary of the secretary of state for India was made a charge on the British exchequer. It was felt that this change would make the the secretary of state for India more amenable to parliamentary criticism, and would interest parliament in Indian affairs. The need of this has been felt since long, but it had been unduly delayed. Though parliament proposed and claimed to be responsible for the administration of India, yet it took no interest in Indian affairs whenever they came for discussion before it. The parliament had gained the notoriety of discussing Indian affairs towards the fag end of its session and that too before empty benches. Ignorance of India and of Indian affairs on the part of the majority of the members of parliament had been admitted time and again by some of the most prominent and most responsible British statesmen. To quote a few examples Lord Macaulay speaking on the Government of India Bill on July 10, 1833 expressed his view thus: "A broken head

1. Paras. 123 and 124 of the Montford Report.

in Cold Bath Fields produces a greater sensation among us than three pitched battles in India. A few weeks ago we had to decide on a claim brought by an individual against the revenues of India. If it had been an English question the walls could scarcely have held the members who would have flocked to the decision. It was an Indian question ; and we could scarcely by dint of supplication make a House. Even when my right honourable friend the President of the Board of Control, made his most able and interesting statement of measures which he intended to propose for the government of a hundred millions of human beings the attendance was not so large as I have seen on a twenpike bill or a rail-road bill."

But this was as true in 1918 as it had been in 1833. Montagu and Chelmsford admitted this when they said in their Report : " We have no hesitation in saying, however, that the interest shown by parliament in Indian affairs has not been well sustained or well informed." Late Ramsay MacDonald expressed the same opinion when in 1918 he wrote ; " I regret that it must be admitted that parliament has not been a just and watchful steward. It holds no great debates on Indian questions ; it looks after its own responsibilities with far less care than it looked after those of the Company. Its seats are empty when it has its annual saunter through the Indian budget. and even this homage of formal politeness to India was neglected during the war ; it is aware of India only when it is troubled by cotton duties or when something else arises which makes their constituencies remind members that India is a British possession."

Therefore, the Act of 1919 by making the payment of the salary of the secretary of state and the expenditure of the India Office a charge on the British exchequer improved matters to some extent.

The Act considerably relaxed the control of the secretary of state over the transferred subjects in the provinces. But he could exercise his control to safeguared the administration of central subjects, to decide disputes between two or more provinces when the provinces themselves could not reach an agreement ; to safeguard imperial interests ; to decide matters relating to the questions arising between India and other parts of the British Empire ; and to discharge other duties imposed on him by parliament. In financial matters his control continued to be great. subject to the fiscal autonomy convention which laid down that whenever there was an agreement between the government of India and the central legislature on any finacial matter the secretary of state for India will not interfere.

Another change was made under the Act by the appointment of an Auditor General by the King-in-Council, who was to audit, with the help of his assistants, the accounts of the secretary of state for India and the India Council. The report of the Auditor-General was to be laid before both houses of parliament. This afforded an opportunity to parliament to examine Indian finances more carefully. A High Commissioner

for India in England was also appointed under the Act and was given such functions of the secretary of state as were considered proper besides looking after the commercial interests of India in Great Britain.

Changes in the Central Government. As already noted, the 1919 Act did not contemplate any important changes beyond the provincial sphere. Yet certain changes were introduced in the central government of India. A bicameral legislature—the Council of State and the Legislative Assembly—was established.

Council of State. The Council of State was the upper house of the central legislature. It consisted of 60 members, of whom 33 were elected and 27 were nominated. The basis of the composition of the Council of State was communal. The representation of the provinces (including elected and nominated members) in the Council of State was as follows :

1.	Nominees of the Government of India including the President	... 11
2.	Madras	... 7
3.	Bombay	... 8
4.	Bengal	... 8
5.	United Provinces	... 7
6.	Punjab	... 8
7.	Bihar and Orissa	... 4
8.	Central Provinces and Berar	... 3
9.	Assam	... 1
10.	Burma	... 2
11.	N. W. F. Province	... 1
	Total	... 60

The franchise for election to the Council of State was based on very high property qualifications. But due to difference in political and economic conditions in each province franchise qualifications were different in each province. In the Punjab only the following could vote :—

1. Owners or crown tenants of land assessed to land revenue of not less than Rs. 750 per annum ;
2. Assignees of land revenue of not less than Rs. 750 per annum ;
3. Persons who paid income tax on an annual income of not less than Rs. 15,000 ;
4. Persons who have been presidents or vice-presidents of municipalities in cities with a population of more than 20,000 ;
5. Persons who were non-official presidents or vice-presidents of any Central Co-operative Bank or Union ;
6. Persons who have been non-official members of central or provincial legislative chambers ;
7. Persons who have been members of the Senate of a university ;

8. Persons who were Punjab Durbaries ;
9. Persons who held the title of Shams-ul Ulema or Mahamahopadhyaya.

The result of this high franchise was that, excluding Burma, only about 17,000 persons could vote for the Council of State. Women were not entitled to vote or to offer themselves for election to the council. The council was elected for five years and the president of the council was nominated by the governor-general.

The Legislative Assembly. The Legislative Assembly consisted of 145 members, of whom 105 were elected, and of the remaining 40 nominated members, 26 were officials and 14 non-officials These 105 non-official elected members were elected on the basis of separate communal electorates.

The franchise for the Assembly varies from province to province. though the qualifications for the vote were lower than those for the Council of State. In the Punjab the following qualifications were required of a voter :—

1. He owned immovable property of not less than Rs. 15, 000 or of an annual rental value of at least Rs. 336 ; or
2. Owned land or was an assignee of land for which he paid minimum annual land revenue of Rs. 100 ; or
3. Was a tenant or lessee of three years' standing, paying a yearly rent of not less than Rs. 100 ; or
4. Paid income tax on an annual income of Rs.5000.
5. A person was qualified to vote for landholders' constituency if he owned land, or was an assignee of land for which be paid land revenue amounting to not less than Rs. 1,000 per year.

The tenure of the assembly was fixed at three years. The first president of the assembly was nominated by the governor-general for four years. Afterwards the president was to be elected. The quorum in the assembly was to be 25 members. The governor-general could dissolve either chamber.

Powers and functions of the central legislature. The two houses were given co-equal legislative powers. Unless both the houses agreed no measure could be finally passed. In case of a conflict between the two, it was provided by the Act that the governor-general could convene a joint session by notification in the Gazette, but in actual practice it was never done. The council of state could pass and amend money bills even if these were rejected by the assembly. The decisions of the legislature were only in the nature of recommendations and the governor-general could reject any one of them. If the assembly refused to pass a measure but if the governor-general certified it as essential then on his recommendation the council of state could pass the measure. But if the assembly refused to agree to measures passed by the council of state the governor-general if he so desired, could certify the measure after which it became law.

Legislative Powers. The central legislature could legislate on all matters included in the list of central subjects. It could make laws for all "persons, courts, places, and things within British India, for all subjects of His Majesty without and beyond s well as within, British India. But for the discussion of the following matters previous sanction of the governor-general was required :—

1. The public debt or public revenues of India or imposing any change on the revenues of India ;
2. The religion or religious rites and usages of any class of British subjects in India.
3. The discipline or maintenance of any part of His Majesty's military, Naval, or Air Forces.
4. The relations of the government of India with foreign princes or states.
5. Any measure regulating any provincial subject, not declared by the Act as subject to legislation by the Indian legislature.
6. Repealing or amending any Act of a local legislature.
7. Repealing or amending any ordinance or act made by the governor-general.

Finance. In matters of finance, although the finance bill was inroduced in the lower house, that body had no final power as any such bill or any part of such a bill, rejected by the assembly could be certified by the governor-general and passed by the council of state, The Indian budget was divided into two parts—the votable and the non-votable. The non-votable items included—

1. interest and sinking fund charges or loans ;
2. expenditure of which the amount is prescribed by or under any law ;
3. salaries and pensions of persons appointed by or with the approval of His Majesty or by the secretary of state-in-council ;
4. salaries of chief commissioners and judicial commissioners ; and
5. expenditure classified by the order of the governor-general-in-council, as
   (*a*) ecclesiastical,
   (*b*) political,
   (*c*) defence.

(Items three and four were slightly changed and some additions were made in item five.)

These could only be discussed by the legislature but were not subject to its vote. With regard to votable items the governor-general could use his powers of certification.

But the most important and interesting feature of the power-of the legislature was that it was dominated by the goverr ors

general who could promulgate ordinances which could have the force of law for a period of six months in the first instance. but should the need arise could be renewed. Further the governor-general either assented to a bill passed by the central legislature or refused his assent or reserved it for the pleasure of His Majesty.

In addition to the above the Indian legislature had two more functions *viz.*, Interrogatory and Deliberative.

Interrogatory. The right to ask questions by the members of a legislature is an important right. It is regarded as a useful check on the vagaries of the executive. But in the case of the Indian legislature no member could ask any question in regard to the following :

1. Any matter affecting the relations of His Majesty's Government or of the Government of India with any foreign state.
2. Any matter affecting the relations of any of the above authorities with any prince or chief or relating to the affairs of any such prince or chief.
3. Any matter which is *sub-judice*.

The members had the right to ask supplementary questions for elucidating any matter of fact regarding which an answer had been given. Ten days' clear notice was required for asking a question.

Deliberative (Resolutions or Motions for Adjournment). The moving of resolutions is regarded a valuable right and a means of influencing the policy of the government. Under the Act of 1919 fifteen days' notice was required for moving a resolution. A resolution must be clearly and precisely expressed and raise a definite issue. Amendments to a resolution which required a day's notice could be moved with the consent of the president.

Motion for adjournment is a means for raising debate upon a question of urgent public importance or interest. It furnishes an opportunity for criticising the acts or omissions of a department of government. In the matter of moving adjournment motions in the Indian legislature the president had *first* to be satisfied about the definiteness, urgency and public importance of the question to be discussed. The right to move motions for adjournment was subject to the following restrictions :

1. Not more than one such motion could be made at the same sitting.
2. Not more than one matter could be discussed on the same motion, and the motion was to be restricted to a specific matter of recent occurrence.
3. The motion must not revive discussion on a matter which has been discussed in the same session.

4. The motion must not anticipate a matter which has been previously appointed for discussion.
5. The motion must not deal with any matter on which a resolution could not be moved (the same on which questions could not be asked).

The Central Executive. An important fact with regard to the central executive set up by the Act of 1919 was that it was not responsible to the Indian legislature. The executive authority was vested in the governor-general-in-concil The governor-general was appointed by the crown on the advice of the British prime minister. No time limit was fixed for the tenure of his office but practice had it for five years. During this period he could be granted leave of absence for not more than four months. He had three great functions to perform: (1) he personified the crown; (2) he represented the Home Government; and (3) he was the head of the Indian administration.

The members of the governor-general's executive council were appointed by His Majesty on the recommendation of the secretary of state for India. Though there was no limit fixed by the Act as to the number of members of the council, it was in practice composed of seven members appointed for five years. These members held respectively the portfolios of Defence (Commander-in-Chief); Education; Health and Land; Home; Finance; Commerce and Labour; Industries and Labour; Law; Communications. Under the provisions of the Act three of the councillors were to be persons who had put in at least ten years' service under the crown in India before being appointed to the executive council, and one of the remaining was to be a barrister or an advocate of the Faculty of Advocates in Scotland, or a pleader of a High Court in India, of at least ten years' standing. In practice three of the councillors were Indians.

The council was nominated by the governor-general. The rules and regulations for the convenient transaction of business were made by the governor-general and were kept absolutely secret and could only be changed at the will of the governor-general alone. Though the council usually met at Delhi and Simla and once or twice in a year in Calcutta, the governor-general could appoint any place within British India to hold the meeting of the council. The quorum for transacting the business of the council was one ordinary member and the governor-general. The secretaries to the departments had the right of free access to the governor-general independently of the members of the council. Further as all orders and other proceedings of the governor-general-in-council were expressed to be made by the governor-general-in-council and signed by a secretary to the government, it was impossible to say whether they were the result of a deliberation and decision in the full council, or of a consultation between the governor-general and the member in charge of the department acting on his own initiative. The meetings of the executive council were presided over by the governor-general. Decisions were arrived at by a majority vote.

But in case of a tie the governor-general or in his absence the vice-president of the council had a casting vote. In any matter affecting the safety, tranquillity or interests of British India or any part thereof, the governor-general could overrule the decision of the majority and act on his own responsibility. A member of the council could speak in and attend either house of legislature but could vote only in the house of which he was a nominated member. The members of the council were not to be responsible to the Indian legislature. The executive council was responsible only to the British parliament. The Simon Commission in their report thus stated the position of the council: "The superintendence, direction, and control of the civil and military government of India are vested in the governor-general-in-council, but he is required to pay due obedience to all such orders as he may receive from the secretary of state In constitutional theory, therefore, the government of India is a subordinate official government under His Majesty's government, though in actual practice this relation of agency is qualified by the extent to which (1) authority is left in the hands of the government of India to be exercised without reference to, or orders from, the secretary of state, and (2) influence is exerted by the Indian legislature upon the acts and policies of the central executive"

The Viceroy. The governor-general occupied and still occupies, another position—that of the Viceroy. As viceroy he is "the crown visible in India, the ceremonial head of the sovereignty, the Great Lord." He is the representative of His Majesty in all relations with the Indian States. Though under normal conditions the government of India does not interfere in the internal affairs of the states, yet in cases of gross misrule or misgovernment or internal disturbances the suzerain power may feel the need of interference, then it is upon the viceroy himself that the actual responsibility rests for "initiating and carrying through such action as may be required". Thus the viceroy was, and is, the connecting link between the Indian princes and the British crown.

As the final responsibility for the administration of India was that of the British parliament and as the secretary of state for India discharged this responsibility on behalf of parliament, the governor-general was required to carry out all orders received from the secretary of state and to keep him fully informed of all matters in India.

Central Subjects. It has been already mentioned that the 1919 Act aimed at a division of the functions of government into central and provincial subjects. Under Devolution Rules Schedule I, the more important of the central subjects were as follows:

1. Defence of India, including the Army, Navy and Air Forces;
2. External relations;
3. Relations with the Indian states;
4. Political charges;

5. Communications ;
6. Shipping and Navigation ;
7. Light houses; bacons, etc.;
8. Port, Quarantine and Marine Hospitals ;
9. Major Ports ;
10. Posts, Telegraphs, Telephones and Wireless ;
11. Customs and Duties, Salt tax, Income tax, etc.;
12 Currency and Coinage ;
13. Public Debt of India ;
14. Saving Banks ;
15. Indian Audit Department ;
16. Civil Law ;
17. Commerce including banking and insurance ;
18. Trading companies and associations ;
19. Opium ;
20. Geological Survey ;
21. Petrolium and other explosives ;
22. Minerals ;
23. Botanical Survey ;
24. Criminal Law ;
25. Arms and Ammunitions ;
26 Meteorology ;
27. Zoological survey :
28. Census and Statistics ;
29. Public Services Commission ;
30. All India Services ;
31. Emigration and Immigration ;
32. Territorial changes ; and
33. All measures not included in the provincial list.

Dyarchy and its failure. The Reforms of 1919 introduced in the provinces a system of government known as the dyarchy. This system made a division of the functions of provincial government between those which were to be made over to popular control (transferred subjects), and those which were to continue in official hands (reserved subjects). The governor-in-council was in charge of the reserved subjects, and the " governor acting with his ministers " of the transferred subjects. This division of the sphere of government between two authorities, one amenable to parliament and the other responsible to the electorate, was known as Dyarchy.

Principle of division. The guiding principle of this division, according to the Montford Report, was " to include within the transferred list those departments which afford most opportunities for local knowledge and social service, those in which Indians have shown themselves to be keenly interested. those in which mistakes that may occur though serious would not be irremediable ; and those which stand most in need of development. But departments primarily concerned with law and order, and matters which vitally affect the well-being of the masses who may not be adequately represented in the new councils, such as the question of land revenue or tenant rights, should not be transferred."

Structure of the Provincial Executive. The executive council of the governor consisted of two to four councillors who were appointed for five years and responsible to the governor of the province and not to the provincial legislature. All decisions of the provincial government in the reserved half of the government emanated from the government as decisions of the governor-in-council, But all the transferred subjects were in charge of ministers who were appointed by the governor from amongst the elected members of the provincial legislature. The ministers held their office so long as they enjoyed the confidence of the governor. With regard to the subjects under their charge they had to carry out the policy laid down by the provincial legislature. In relation to the transferred subjects all decisions of the government emanated from the governor acting with his ministers. The object of this division in the executive government of the province was to make a beginning (what a beginning !) for the grant of partial—only partial – responsible government as an experimental measure. It was also declared that if this experiment proved a success, (fortunately it did not) so as to justify the extension of responsible government in all, or some more of the reserved subjects the British government would enlarge the sphere of transferred subjects which may ultimately lead to the full provincial responsible government with provincial autonomy.

Powers of the Governor with regard to Dyarchy. The governor being the pivot of dyarchy was armed with special powers to overcome the difficulties of the system. These special powers related to—

1. **Power to define spheres of jurisdiction.** The first difficulty felt in the working of the system was about the jurisdiction of the two halves of government. Though lists of reserved and transferred subjects were drawn up, it was not always clear whether a particular matter belonged to one or the other division. Therefore in cases of disagreement between the executive councillors and ministers regarding jurisdiction the governor was auththorised to decide as to which half the matter in question belonged.

2. **Power of the purse.** The governor was charged with financial responsibility in connection with both the halves of government. This was the problem of allocation of funds for the transferred and the reserved subjects. The reserved half was primarily concerned with law and order in the province and therefore must be guaranteed sufficient revenue for efficient administration and this inspite of the possible opposition of those responsible for transferred subjects. On the other hand nation-building departments like education which were capable of unlimited improvement and needed money most must not be starved on the doubtful plea of the more urgent needs of the reserved subjects. Such was the difficulty for the governor. Two alternate schemes—one of 'joint purse' and the other of ' separate purse '—were proposed to solve the problem. Arguments for and against were advanced for both the proposals. The joint committee decided in favour of the joint purse and thus the

dictum of the joint committee placed in the hands of the governor-in-council a very large measure of control over subjects for which they were not directly responsible. The portfolio of finance was placed in the hands of a member of the executive council. The ministers thus had to look up to him and his department for all schemes of expenditure. It is in the financial helplessness of the ministers that the chief cause of the failure of dyarchy is to be found.

Provincial Legislature. As a result of the Reforms of 1919 franchise was extended and the legislatures were enlarged. Persons holding high educational qualifications (a high standard indeed !) and those who paid land revenue or rents as occupancy tenants, up to a certain limit, were given the right to vote for elections to the provincial legislative councils. The life of each provincial council was fixed at three years. but should the need arise, it could be dissolved earlier by the governor ; and if he thought necessary he could also extend its term. Each province was divided into constituencies for purposes of election. There were urban and rural constituencies. The Muslims all over India, the Marathas in Bombay, the non-Brahmans in Madras, the Sikhs in the Punjab and industrial and commercial interests in all the provinces were given fixed and separate representaion. The act granted communal representation and separate communal electrorates, and weightage representation to minority communities. The depressed classes were also allowed some representation by nomination The Muslim representation was based more or less on the Lucknow Pact of 1916 though that community had been granted separate electorates.

The size of each provincial legislature was enlarged. In each of these councils elected members constituted not less than seventy per cent. while the official element was not more than twenty per cent. Thus each provincial council got a large elected and non-official majority. The remaining seats were filled by nomination by the governor to give representation to special interests—Labour, the Christians, Anglo-Indians, Depressed Classes, etc. The minimum strength of each provincial legislature was fixed by the Act, but the actual total was slightly larger in each province. For example, in Madras the minimum strength prescribed by the Act was 118, but the actual total was 132 ; again in the Punjab the minimum was 83, but the actual number was 94. The Act did not enfranchise women, but empowered the legislatures to enfranchise women who could seek election in the constituencies. It has been noted that the franchise in the provinces was based on property qualifications. This resulted in the majority of the population, which was very poor, being left unenfranchised. It will be evident from the percentage of voters to the total population, in various provinces, which was as follows : Bombay 3·9 ; Bengal 2·5 ; Madras 3·2 ; United Provinces, 3·5 ; Punjab 3·4 ; Bihar and Orisa 1·1 ; Assam 3·7 ; Central Provinces and Berar 1·3 ; Burma 17·4. It must also be pointed out that a very large majority of the electorate was illiterate and therefore at the mercy of the rich.

The members of the legislature did not receive any salary but drew travelling and daily allowances for the period they attended the meetings of the legislature. The electoral constituencies were very large and it was not possible for members to keep in sufficient contact with the electorate, but it must be said to their credit that they tried to make the best use of the opportunities offered them under the new Act. The elections of 1920 were boycotted by the Indian National Congress; but in 1923 and 1926 the Swaraj party contested the elections. In the elections held in the provinces the big zemindars got larger number of seats because of their influence and control exercised through undue pressure over the illiterate electors. The lawyer class, always ready to take keen interest in the business of law-making, also captured a good number of seats.

Parties in the Legislatures. Political parties are absolutely necessary for the successful working of parliamentary institutions and parties were formed inside the legislatures, but unfortunately most of them were not properly organised nor they had any definite political programmes either to place before the people or to work out. In the first elections that were held under the Reforms of 1919 liberals successfully won in sufficient number and were able to form ministries in a number of provinces. The provincial governors adopted the practice of selecting their ministers from the parties likely to command majority support in the council. In many provinces—United Provinces, Bombay, Madras and Bengal—the first ministries adopted many beneficial measures. But in these provinces as well, especially after the 1923 elections, the ministries had to depend upon official support and thus the Swaraj Party was able to create a deadlock in administration in two provinces —Bengal and Central Provinces. The Swaraj Party morally backed by the Indian National Congress was undoubtedly the most well organised party. It had a definite political programme, but its aim to wreck the 1919 Reforms did not allow it to accept offices. The zamindars also organised themselves into a party, specially in the United Provinces. Their conservative views, narrow vision, self-interest and too much dependence on government favour deprived them of any popular support.

It must be pointed out that the greatest defect of the party system that began notably after the 1923 elections, was the formation of communal parties, like the Muslim Party, the Hindu Sabhaites, the Non-Brahman Party, etc. The communal outlook of the members of legislatures obstructed the growth of healthy Indian nationalism and thus proved a hindrance in the working of the Reforms to their best advantage.

Powers of the Provincial Legislature. With regard to the powers of the provincial legislatures it may be pointed out at the outset that the provincial government had been given certain definite subjects of administration called the provincial subjects, under the Act of 1919. These provincial subjects were again divided into reserved and transferred subjects. Most important of the reserved subjects were: Land revenue

and administration of justice, including jails, law and order, all kinds of courts and provincial law reports : non-judicial stamps ; development of mineral resources ; industrial matters relating to electricity, boilers, explosives, gas, settlement of labour disputes, welfare of labour, such ports as were given to the provinces ; inland waterways ; police ; criminal tribes and excluded areas : regulation of medical qualifications : control of newspapers and government presses ; vagrancy ; local fund audit ; all finances and borrowings.

The transferred subjects included local self-government : medical administration ; public health and sanitation ; pilgrimages within British India ; education (the Benares Hindu University and the Aligarh Muslim University. and Chief's Colleges excepted) ; public works ; agriculture ; fisheries ; co-operative societies ; civil veterinary department : forests ; excise ; development ot industries ; libraries : pounds and cattle trespass ; weights and measures subject to central legislation ; adulteration of foodstuffs and stores and stationery ; registration of deaths and births ; religious and charitable endowments.

Measures passed by the provincial legislature required the assent of the governor as well as of the governor-general. Certain classes of bills, for example, those relating to the religion of any community or to the revenues of the province, were to be reserved by the governor for the assent of the governor general. In addition to this the act gave to the governor the extraordinary power of certifying a bill, rejected by the provincial legislature, but the power could be used only in the case of a bill which belonged to the reserved half of the subjects.

In financial matters also the governor enjoyed special powers against the refusal of the legislative council to vote a grant relating to any reserved subject. But if the council refused money for any of the transferred subjects, that refusal was final unless the matter came within the provisions which empowered the governor to certify an expenditure as being essential for "the safety or tranquillity of the province or for the carrying on of any department." Under certain circumstances or conditions specified in the Act the governor could also promulgate ordinances.

Failure of Dyarchy. The system of dyarchy as established by the Act of 1919 was in the nature of an experiment as was admitted by the British Parliament, the authors of the joint report and all other authorities on the Reforms. It was also admitted that dyarchy had certain inherent defects, yet it was considered essential as a stage in the political development of India. The British politicians had expected that this experiment would prove a success A committee known as the Muddiman Committee, was appointed to report whether dyarchy was a success or failure. The Muddiman Committee was not unanimous in its report. There was a minority report and a majority report. The majority consisted of Muddiman, Mohammad Shafi, Maharaja of Burdwan, Arthur

Froom, and H. Moncriff Smith. The minority consisted of Tej Bahadur Sapru, Sir P. S. Sivaswamy Iver, Jinnah, and Dr. Paranjpye. The majority report thought that it was too early (in 1923-24) to say that dyarchy had been a failure. It suggested modification of certain rules to improve it.

The minority represented Indian public opinion and declared that dyarchy has worked 'creakily'. According to the analysis of the majority report specific allegations against dyarchy were as follows :

1. The impinging of the administration of reserved upon the administration of transferred subjects, and *vice versa.*
2. The failure to encourage joint deliberation between the reserved and transferred sides of the provincial governments.
3. The absence of joint responsibility of the ministers.
4. The failure of the Constitution to vest real authority in the ministers, owing to the control of—
   (*a*) the Governor, and
   (*b*) the Government of India and the Secretary of State for India.
5. The vesting of the control of the Finance Department in a member of the reserved side of the government, the control thus given to the reserved side over Ministers and, generally speaking, the handicapping of the other departments by excessive financial control.
6. The failure on the part of officials belonging to permanent services to co-operate with the ministers.

It must also be pointed out that dyarchy as actually introduced in the provinces was not of a 'pure' type but of a 'mixed' type as 'pure dyarchy' would have meant—

1. an absolute and final division of functions in which one half of government could not influence or interfere with the other half.
2. The ministers in charge of transferred subjects entirely responsible to the electorates, and the governor-in-council absolutely responsible to the secretary of state for the reserved subjects.
3. The two halves of the government must have separate and distinct.
   (*a*) legislatures, (*b*) finances, (*c*) set of permanent officials for administration.

The officials could not be members of the popular legislature ; each half to have been given a 'separate purse' with definite and precise powers of taxation and borrowing ; and lastly neither half could use the same set of officials as their subordinates. In fact pure dyarchy would have required a 'vertical' division of provincial functions, with a separate

legislative organ, financial powers and administrative machinery from top to bottom.

Conclusion. It must be admitted that though dyarchy received a fair and a reasonable trial at the hands of those who had faith in the Reforms of 1919, it was a miserable failure so far as it was meant to inaugurate responsible government in the field of the transferred half of the provincial government. Ministerial responsibility to the legislatures was absent nor the councils had any real control over ministers. The bureaucracy and the governor gained rather than lost as a result of the introduction and working of dyarchy in the provinces. It was said by some that it was a bridge between responsible government and bureaucracy but even so it proved a bridge weak and of doubtful value. It outlived its usefulness earlier than was expected and the Indian public opinion insistently demanded the revision of the position. The demand for the revision of the position in India is one of the most glorious chapters in the political history of India and the one in which the genesis of the present constitution of India is to be found.

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CHAPTER 37.

THE MAKING OF A NEW CONSTITUTION.

The years between the close of the last World War and the meeting of the first Indian Round Table Conference (1930) are momentous in the political history of India. The Reforms of 1919, in view of the sacrifices made in men and money in the war, failed to satisfy the aspirations of Indian Nationalism. At the Amritsar session of the Indian National Congress (1919) which was a triumph for national self-respect, the late Desbhandhu C. R. Dass moved a resolution "That this Congress adheres to the Resolution of the Delhi Congress regarding Constitutional Reforms and is of opinion that the *Reforms Act is inadequate, unsatisfactory and disappointing.*"

"That this Congress further urges that Parliament should take early steps to establish full Responsible Government in India in accordance with the principle of self-determination." Thus the dissatisfaction with the 1919 Act and the demand for a better scheme of government for India had begun immediately after the Act was passed. But what could satisfiy in 1919 could not be adequate in 1935. During this period there has come about a great change in the aspirations, ideals and ideas of the Indian people. As Begum Shah Nawaz said at the Round Table Conference: "Things have moved and are moving at such a tremendous pace that we ourselves are s.artled. In the remote corners of India, in the out of the way places, you will find people, especially boys and girls, talking of their national aspirations and of the freedom and liberty of their motherland. There is such an awakening in the youth of this country, both in the rural and urban areas, that it is not possible to check the growing desire, the increasing spirit, which animates them to form themselves into a nation worthy of the name."[1] But long, before the First Round Table the demand for responsible government had become quite definite. Thus the special session of the Indian National Congress held at Bombay (1918). showed the way in which the wind was blowing. "The Congress declares that the people of India are fit for Responsible Government and repudiates the assumption to the contrary contained in the Report on Indian Constitutional Reforms."

Muddiman Committee. It is interesting to note in view of the later events that the Round Table Conference method of drafting the constitution was placed before the country so early as 1924 by the leader of the Swarajsts in the Assembly. The leader of the Swarajists moved that :—

> "This assembly recommends to the Governor-General-in-Council to take steps to have the Government in India Act revised with a view to establish full Responsible Government in India, and for the said

1. First Round Table Conference Proceedings, p. 114.

purpose, (*a*) to summon at an early date a representative Round Table Conference to recommend, with regard to the protection of rights and interests of important minorities, a scheme for a constitution for India; and (*b*) after dissolving the Central Legislature. to place the said scheme for approval before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a statute."

It was as the result of this resolution that the Muddiman Committee was appointed. The Committee submitted their Report—Majority and Minority—which were considered by the Assembly (7th September 1925) in the form of a proposition moved by the chairman of the Committee, Sir Alexander Muddiman, to which a long amendment was tabled by the late Pandit Motilal Nehru, the gist of which was that immediate steps be taken by His Majesty's Government (1) "to make a declaration in Parliament embodying such fundamental changes in constitutional machinery and administration of India as would make the government of the country fully responsible; further, (2) a Round Table Conference or other suitable agency adequately representative of all Indian, European and anglo-Indian interests was to be summoned to frame, with due regard to the interests of the minorities, a detailed scheme based on the above principle, and to place the said scheme for approval before the Assembly, aftier which it would be submitted to the British Parliament to be embodied in a statute."[1] This amendmet after full two days' discussion in the Assembly, was carried against the government by 72 votes to 45. Speaking on his amendment Pandit Motilal pointed out that dyarchy as a political system, was unknown to political experience, ancient or modern; that it was intended by speculative constitutionalists in their love for constitution mongering. The authors of the constitution were themselves aware that this hybrid constitution contained in it great potentialities for friction. In effect, he told the House that the Montford Report stated 'We give you an unworkable machine and you try to work it!' While closing he threw down the gage to England: "The history of the so-called Reforms is painful and depressing reading at present, but as it develops in the near future, it will, I am confident, furnish the brightest chapter to the chequered history of this land. The struggle for freedom once begun must sooner or later have its appointed end, and that end is no other than the achievement of the fullest freedom. It remains to be seen whether England will share the credit of the achievement by willingly giving a helping hand or suffer that achievement to be wrested from her unwilling hands. These are the only alternatives. It is for England to choose."

It was obvious that the need for change was imperative. The Montford Reforms were adopted by the British parliament on the condition that they should remain in operation at least for ten years. But discontentment and disappointment with the

1. B. Pattabhi Sitaramayya, op. cit., p. 484.

Reforms became manifest as early as 1923. The strength and fairness of the demand may be measured from the fact that Birkenhead, the then secretary of state for India, got the 1919 Act amended as to allow the appointment of a Royal Commission to examine the working of Reforms before the elapse of ten years which was originally contemplated in the Reforms Act of 1919.

The Simon Commission. As a result of this amendment the British parliament appointed the Statutory Commission (November 5, 1927). The commission was composed of Sir John Simon (chairman), Lord Burnham, Lord Strathcona and Mount Royal, Edward Cadogan, Vernon Hartshorn, Colonel G. R. Lanefox, and Major C. R. Atlee. Thus there was no Indian included in the commission and it was said that it was the first Royal Commission appointed during recent times without an Indian member. The members of the commission were all members of parliament. Two were liberals, three conservatives, and two belonged to the Labour Party. Even pro-British opinion considered the matter of composition of the commission a tragic blunder as it did not include any Indian. The arguments advanced to justify this discrimination against Indians mere not convincing in the least. For example, it was pleaded that it was a legislative or Statutory Advisory Commission and as such was naturally chosen from amongst the members of parliament There were two Indians—late Lord Sinha and late Mr Saklatwala—who were members of parliament at that time; but Lord Sinha was disqualified by ill health and Mr. Saklatwala as a Communist perhaps would have found it difficult to co-operate with a 'capitalist' royal commission. Be that as it may, as a result of the blunder of the British government the commission had to work under a heavy drawback. In the meantime Lord Birkenhead threw out a gauntlet to the Indian leaders to produce a constitution and submit it to parliament for its consideration. He argued that due to the hopeless division and friction existing between the different communities of India it was futile to include any Indian in the commission This produced a reaction in India. All the parties took up this challenge and appointed a committee representative of all shades of public opinion to draft a constitution for India. This committee was presided over by the late Pandit Motilal Nehru and came to be known as the Nehru Committee. The report of this committee was discussed and adopted with minor modifications at Lucknow and Calcutta in the All Parties Conference and the National Convention respectively.

India resolved to boycott the royal commission (Simon Commission) as it was an insult to the national self-respect to exclude Indians from it. In fact India had never before been so united on any particular political question as on the boycott of the Simon Commission. Soon after it arrived the chairman of the commission Sir John Simon addressed a letter to the Viceroy dated 6th February, and published on the 7th, proposing that the commission would like to take the form of a joint free conference between the English seven and an Indian seven, to be selected by the Indian Legislature. All materials would be available to all

the members, British as well Indians, sitting on the conference on free and equal terms. The provincial legislatures were also to be asked to set up a similar body. The Indian part of the conference would consist, when the central subjects were being discussed, of the joint committee of the central legislature and when provincial subjects were discussed of the committee of provincial council concerned. But the members of the all-white commission were to submit their report separately to the British government and the joint committee to the central legislature. But this declaration evoked no response Within two or three hours of its issue, the political leaders met at Delhi and declared that their objection to the commission remained unaffected that it was not possible for them to have anything to do with the commission at any stage or in any form whatever. The assembly did not care to elect their representatives to the central committee That prince among patriots the late Lala Lajpat Rai the lion of the Punjab, moved a resolution in the central assembly on February 16, "That the constitution and scheme of the Commission were wholly unacceptable to the Assembly which should have nothing to do with it, at any stage or in any form." It was declared by the late Pandit Motilal Nehru that the resolution was not negative but was a positive assertion that an equal number of Indians must be appointed to the commission by His Majesty the King before Indians would co-operate." The resolution was carried by 68 to 62 votes. The government had, therefore, to nominate members from the central assembly to the central committee.

The Commission visits India. The Commission landed in Bombay on February 3, 1928. The boycott of the Commission began by the observance of an all-India hartal on the day of their arrival. The day otherwise was uneventful. In Madras the attitude of the crowds at the High Court was considered threatening by the government and the police opened fire as a result of which a number of people were injured ; one fell dead on the spot and two died later. In Calcutta there was a conflict between the police and students. In Delhi the visit of the Commission was marked by hostile demonstrations with placards and banners with the words : "Go back, Simon!"

The great success of the boycott led the government to employ methods of coercion and terrorism. In Lahore a huge gathering of people headed by the late Lala Lajpat Rai, demonstrating against the Commission was treated to *lathi* and baton blows by the police. Lalaji was one of those who received blows and it is believed that his end was hastened by this assault.

Lucknow gained notoriety in connection with the boycott of the Commission. The city was converted into an armed camp with thousands of mounted and foot police and for days terror reigned supreme. One was reminded of the reign of terror in the days of the French revolution. Private houses were invaded by the police and respected national workers were beaten an! arrested for daring to call out "Simon, go back!" But it must also be pointed out that the citizens of Lucknow refused to be cowed down by these methods and increased their expression of resentment and demonstrations. They even added

a touch of humour—a good humour at that—and set the whole city laughing at the discomfiture of the authorities and the plight of the Commission. A party given by some of the members of the British India Association to the commission (an association of the Talukdars of U.P.) at the Kaiserbagh Baradari provided an opportunity to the citizens of Lucknow to express their ingenuity. The Kaiserbagh area was surrounded by thousands of police and not a single person who was suspected to be a boycotter was allowed to approach even the public roads near the Kaiserbagh square Inspite of these precautions the smoothness of the party was disturbed by the arrival of hundreds of kites and balloons from the sky bearing the legends "Simon, go back", "India for Indians." Lastly it may also be mentioned that when the Commission visited Bombay, not even one of the 22 belted knights of the city cared to meet the Commission.

The year 1928 was crammed with events like the marches of the Simon Commission, the sittings of the All Parties Conference and the Bardoli movement and the appointment of the Nehru Committee

The Round Table Conference.—The Simon Commission was "increasingly impressed by the impossibility of considering the constitutional problems of British India without taking into account the relations between British India and the Indian States." Therefore in December 1927 a body called the Butler Committee had been appointed to consider these relations, but the terms of reference did not cover the whole ground.

After the publication of the Report of the Simon Commission in 1930 there were four main stages in the making of the new Constitution. From November 1930, to December 1933 three sessions of a Round Table Conference were held in London between the representatives of the United Kingdom, British India (to be more accurate, nominees of the Government of India) and the Indian States. The conference was informed by the British Government that it was its policy to convert "the present system of government in India into a responsibly governed Federation of States and provinces, on the understanding that the responsible government so established must during the period of transition be qualified by limitations in certain directions." Tne first session of the Round Table Conference was held in London from 21st November, 1930 to 19th January, 1931. It was boycotted by the Congress. The most important event of the Conference was the announcement by the Bikaner Ruler that the rulers of the Indian States were prepared to join an All-India Federation.

During the interval between the first Round Table Conference and the second there were three main factors which influenced the progress of events. Firstly the Gandhi-Irwin Agreement was concludec as a result of which the half-naked fair of India ' not only walked up and down the steps of the Viceregal Lodge in Delhi, but also went to negotiate peace on terms of equality in the halls of St. James' Palace. Secondly some of the princes showed a tendency to emasculate the plans

for a federal constitution. Thirdly recrudescence of communal riots.

The second Round Table Conference was held between September 84 and December 1, 1931. Most of the work of the Conference was done by two committees carried over from the previous session—the Federal Structure Committee and the Minorities Committee.

The third Round Table Conference which met in 1932 completed the work of co-operating with the British Government to adopt a constitution for India. The British government publisbed their proposals—March 1933—in the form of a White Paper. Almost all parties and important leaders in India expressed their dissatisfaction and disappointment with the proposals because they fell far short of the Indian nationalist aspirations. A Joint Parliamentary Committee was appointed by the British government to examine these proposals On the basis of the report of the Joint Parliamentary Committee a bill was introduced in the Parliament which was amended by both houses to satisfy the conservative party against the interests of India. After being passed finally it secured the assent of the king and became the Government of India Act, 1935. The study of Government of India Act, 1935 is the purpose of the following pages.

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CHAPTER 38.

THE MAIN FEATURES OF THE 1935 ACT.

Introductory. Before describing the system of government set up in the provinces and proposed to be set up ultimately in the centre, we must understand its main features which, without any claim to exhaustiveness, may be, said to be the following;

1. It has no preamble.
2. No mention is made in the Act of the fundamental rights of citizenship.
3. Viewed as a whole it does not make any real advance to a true responsible government in India.
4. It still maintains intact the old principle of parliamentary trusteeship.
5. It attempts to unite two incompatible principles—autocracy and democracy.
6. The sovereign authority in the theory of the Act is cated outside India. Section 2 of the Act is quite explicit on this matter.
7. It is neither purely federal nor purely unitary but a combination of the two.
8. It introduces provincial autonomy in the provinces but with a restricted scope.
9. It sets up a rolls royce administration in a bullock cart country.

No Preamble. The Government of India Act, 1935 contains no preamble. It is therefore difficult to know from the provisions of the Act the exact nature and scope of the new constitution as well as the goal of British policy in India. The new Act repeals the 1919 Act, but definitely says (section 478) that "nothing in this section shall affect the Preamble to the Government of India Act, 1919." The Preamble to the Government of India Act, 1919, said that—

1. "Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions with a view to the progressive realisation of Responsible Government in British India as an integral part of the British Empire"; and
2. Whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction now be taken; and
3. Whereas the time and manner of each advance can be determined only by Parliament upon whom

responsibility lies for the welfare and advancement of the Indian people; and

4. Whereas the action of Parliament in such matters must be guided by co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility ; and

5. Whereas concurrently with the gradual development of self-governing institutions in the provinces of India, it is expedient to give to those provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

This Preamblemay be taken to be still in force as it is not repealed. But it may be pointed out that it contains continuous matter in the first three items which was never accepted by Indian national opinion.

The Preamble to the Government of India Act, 1919 might have stated the then existing conditions. To-day the conditions and aspirations of Indian people have changed and the Preamble has become unsuited to the present aspirations and conditions of the people in India. For example. the Preamble to the Act of 1919 applied clearly only to British India, but the new Act contemplates an all-India federation minus Burma, i.e., the Indian States are also made a part of the federation of India. Again, rhe Preamble speaks of an 'Empire'. The term might have suited the United Kingdom, the Dominions, the Dependencies beyond the seas in 1919; but it cannot be used appropriately after the creation of the Eire and the passage of the Westminster Statute. To-dav one may say that there is no British Empire but a British Commonwealth of free, equal and self-governing communities scattered all over the world. Be as it may, the Preamble to the Government of India Act, 1919, which is not repealed, has no significance even if is taken to form a part of the Government of India Act, 1935

Fundamental Rights not mentioned. The Government of India Act, 1935 not only lacks in a Preamble but is also silent on the fundamental rights of citizenship. The guaranteeing of fundamental rights is a distinguishing feature of a liberal constitution, but the 1935 Act is distinguished by their absence. Collectively taken these fundamental rights constitute economic and civil liberties of the people It is true that in Great Britain itself such rights are not mentioned in any constitutional document, but it must not be forgotten that in England the constitu- is itself based on individual rights and rights are not derived from the constitution. In other words, in England civil and economic liberties are a part and parcel of the English common law which is not the case in this country.

3. **No real advance towards responsible government.** The Act emphasises the desirability of extending the scope of

responsible government, but under the provisions of the Act the executive both in the provinces and the centre is armed with special powers—financial, legislative and executive—which makes responsible government set up or proposed to be set up under this act a mere farce. Moreover the 1935 reforms are again in the nature of an experiment. The governors in the provinces and the governor-general in the centre can assume all or any of the powers of the provincial governments and the federation respectively by proclamation. The ministers in the provinces are appointed and dismissed in the discretion of the governor and the scope of responsible government even in the provinces is restricted, too much restricted. More of it while discussing provincial autonomy.

4. **Principle of Parliamentary Trusteeship.** The parliament is made the sole judge of the ultimate destiny of India under the provisions of the 1935 Act. It has been pointed out that according to the preamble to the 1919 Act the parliament is made the one and the sole judge of the time and manner in which each successive stage of constitutional advance should be made. But we may point out that parliamentary trusteeship has never been exercised in the interests and for the benefit of India. Even under the new Act the principle of parliamentary trusteeship and sovereignty is kept intact. The Act does not concede the right of amending the constitution to the Indian people. It is the British parliament alone which can amend or modify the constitution.

5. **An attempt to unite Principles of Autocracy and Democracy.** The Government of India Act, 1935 accepts the need of a federal government for India including the Indian States. Thus broadly speaking, the units of the federation proposed to be set up under the provisions of the Act are the provinces of British India and those Indian States, to be more accurate, Indian Princes who join the federation by executing an Instrument of Accession. It may be pointed out that the system of government prevalent in the British Indian provinces is representative while the Indian States are automatically governed. The representatives of British India in the federal legislature will be popularly elected while the representatives of the rulers will be appointed by them. Autocracy and democracy are two antagonistic principles and the Act has made an attempt to do the impossible by trying to reconcile them.

6. **Location of Sovereign Authority outside India.** In the theory of the Government of India Act, 1935 the sovereign authority is definitely located outside India. Section 2 of the New Act is very definite and clear about it and says :

> 1, All rights, authority and jurisdiction heretofore belonging to His Majesty the King-Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty,

except in so far as may be otherwise provided by under the Act, or as may be otherwise directed His Majesty.

Provided that any powers connected with the exercise of the functions of the crown in its relations with Indian States shall in India, if not exercised by His Majesty be exercised only by, or by persons acting under the authority of, His Majesty's representative for the exercise of those functions of the crown.

2. The said rights, authority and jurisdiction shall include any rights, authority and jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State-in-Council, the Governor-General, the Governor-General-in-Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

The Government of India Act, 1935 provides for establishment of a federal polity for all India including the British Indian Provinces and the Indian States. But the proclamation of British sovereignty has nowhere been so outspoken and definite as in the provisions of the new Act specially in Section 2 (quoted above). This section provides for the resumption of all rights, authority and jurisdiction in and over the territories of British India as well as those of the Indian states into the hands of the British crown and not the federal government of India.

7. **Neither Federal nor Unitary.** The new Act is a curio in a political museum—a unique piece of political architecture. As will be seen in the following pages it is full of anomalies. Whatever the reasons for these anomalies it is neither fully federal nor unitary but a compound of the two. For example, one would find a combination of the principle of the Canadian federation and of the German Empire.

(*a*) In the matter of distribution of powers between the centre and the provinces it follows the Canadian practice.

(*b*) In relation to the states it imitates certain peculiar features of the German Empire 1874—1919.

8. **Restricted scope of Provincial Autonomy.** It claims to introduce provincial autonomy in the provinces, but the scope of responsible government in the provinces is restricted by the powers of the governor in his discretion, individual judgment and special responsibilities In the legislative sphere the legislative powers of the governor are a further limitation on the scope of responsible government in the provinces

Sets up a rolls royce administration in a bullock cart country. The main condemnation of the British rule in India, all other things considered is that it has been 'damnably expensive'. No attempt has ever been made in any of the Reform Acts to set up a less expensive system of administration in this country. On the other hand with each successive stage of re-

forms the system of administration has been made progressively expensive and the Government of India Act, 1935 is no exception. It is feared that if and when federation of the 1935 model is set up in this country, the country may be crushed under the financial burden imposed by the new structure. For example a few comparative figures may be very illuminating and perhaps shocking as well. In considering these figures exchange value has been counted roughly but still will give a fairly accurate idea.

Let us first take for purposes of contrast an Asiatic country —Japan. The Prime Minister of Japan receives Rs. 622 per month: the Premier of Bengal, a province having less than half the population of the Japanese Empire, receives Rs. 3,000.

Other Japanese Ministers receive Rs. 440 and Secretaries Rs. 375; the Chief Secretary of Orissa receives Rs 2,150, and of the Bengal Rs. 5,333.

The Governor-General of Korea gets Rs. 440; the Governor of the Punjab Rs. 8,333.

Let us take an example from Europe. Poland is far richer than Bihar, the population of which is also less. Yet the President of the Polish Pepublic receives only Rs. 1,560 monthly while the Governor of Bihar is paid Rs. 8,333. Even district magistrates recive higher salary than the Polish President.

Let us turn to America now. America is enormously rich. In America the *per capita* income is more than twenty-two times that of India and the cost of living is notoriously high. If the income of high officials should be proportionate to that of the people, Indian salaries should be about one-twenty-third that of American officials. The population of U. S. A. is smaller than that of India, while the revenues are ten times as great. It would not be unfair to compare the President of the U. S. A. with the Viceroy of India. The President draws a salary of Rs. 17,062 per month, the Viceroy, Rs, 21,333. An American Cabinet Minister receives Rs. 3,412; a member of the Governor-General's Council, Rs. 6,667. A chief justice of America receives Rs. 4,550; a chief justice of Bengal, Rs. 6,000.

Lastly let us turn to England. Its population is 12 per cent. that of India. Its revenue receipts are 317 per cent. higher than the budget estimate of the Government of India for 1936-37. The Prime Minister receives half the salary of the Viceroy. Out of every Rs. 1,000 collected the Viceroy draws Re 1. Out of every Rs. 100,000 collected in England, the Prime Minister gets one rupee. The highest salary of an English Civil Servant is Rs 3,333 and the majority receive between Rs. 727—1,000.

To this we may add the enormous expense of the army in India. The Defence Budget and the Debt Charges, making 76 per cent. are not subject to the control of Indian Legislature. The ecclesiastical department looks after the souls of Britishers in India but is paid by the Indian.

In conclusion it may be said that a more unworkable system of government than the Government of India Act, 1935 could not have been devised by the ingenuity of man. The sooner it is changed the better for India and England.

QUESTIONS AND TOPICS.

1. Discuss some of the important features of the Government of India Act, 1935.

CHAPTER 39.

THE FEDERATION OF INDIA.

Establishment of Federation and the Accession of Indian States. The Government of India Act, 1935 embraces, as already stated, British India minus Burma and such Indian states as accede to the proposed federation. But the 1935 Act itself does not establish the federation of India. It only provides that a federation is to be constituted, called the Federation of India, by Proclamation made by His Majesty from the day mentioned in that Proclamation.

It requires the fulfilment of two conditions before such a proclamation constituting the Federation of India is made:

Firstly, an address in that behalf must have been presented to His Majesty the King by each house of the British Parliament.

Secondly, rulers of Indian States who are entitled to not less than half (52) seats in the Council of State and also representing at least one half of the population of the states shall have acceded to the Federation.

Thus it may be said that the establishment of the Indian Federation has been made dependent upon the joining of the required number of states representing the required strength of the population. What if these conditions are not fulfilled? The skies do not fall nor does the earth rise if these conditions are not fulfilled but simply the proposed Federation of India does not come into being at all. The 1935 Act simply provides for a certain structure to be erected only if certain conditions are fulfilled.

Units of the Federation. The proposed Federation of India is made up of the following units:

1. The Governors' Provinces,
2. The Chief Commissioners' provinces, and
3. The federating states.

1. The Governors' Provinces. Two new provinces—Orissa and Sind—have been created. There are now eleven Governors' provinces—the North-Western Frontier Province, the Punjab, the United Provinces, Bihar, the Central Provinces and Berar, Assam, Orissa, Madras, Bengal, Bombay and Sind. Other provinces may also be created by Order-in-Council as authorised by the Act, after consultation with the Federal Legislature and Executive as well as with the authorities of any province which is affected by the creation of new provinces. The alteration of boundaries is also provided for by the Act in the same manner. Under the provisions of the agreement dated October 24, 1936, between the Nizam and His Majesty, the sovereignty of the Nizam over Berar is admitted but it is to be administered with Central Provinces as one province. If the new arrangement or

the agreement terminates the Crown may make any necessary adjustments affecting the provisions of the Act concerning Central Provinces. According to the terms of this agreement the sovereignty of the Nizam over Berar is re-affirmed. Henceforth the Nizam and his successors will be known as "His Exalted Highness the Nizam of Hyderabad and Berar." The heir-apparent has been granted the title of "His Highness the Prince of Berar." The Nizam of Hyderabad has the right to be consulted in the matter of the appointment of the Governor of the Central Provinces and Berar. He has also the right to fly his flag along side the Union Jack in Berar. He can confer Hyderabad titles on Berarians, he can hold Durbar in Berar, and is allowed to maintain an Agent at the seat of the Central Provinces government. There will be no objection on the part of His Majesty to the Khutba being read in any mosque in Berar in the name of the Nizam. The Nizam is still being paid rupees twenty-five lakhs per year as under the agreement of 1902. The Governor of the Central Provinces and Berar, in signifying his assent in the name of His Majesty to any Bill of the Central Provincial and Berar legislature, applying to Berar, and in notifying the assent of His Majesty to any such Bill reserved for the Crown, shall state that the assent to the Bill in its application to Berar has been given by virtue of the Nizam's assent. The agreement is not subject to the provisions of section 6 of the Act of 1935 nor does tbe jurisdiction of the Federal Court extend to any dispute arising under the terms of this agreement. The agreement has come into effect whether the Nizam joins or does not join the proposed federation.

2. **The Chief Commissioner's Provinces.** The Chief Commissioners' provinces are Ajmer-Merwara, British Baluchistan, Coorg and she Andamans and Nicobar Islands, the area known as the Panth Piploda, and such other provinces as mag be created under the 1935 Act.

3. **Indian States.** Indian States are sovereign units in relation to British Indian proeinces. Their accession to the proposed federation of India is only a voluntarv act on the part of their rulers. The Government of India Act, 1935 does not itself make any Indian state a member of the Indian federation. It only lays down a certain method by which a state may, if it so desires, join ; it also lays down the legal consequences which ensue from the accession of a state to the federation.

Instrument of Accession. The ruling prince of an Indian State has to signify his willingness to the Crown to join the federation by executing an instrument called the Instrument of Accession. A state is deemed to have joined the federation on the acceptance of such an instrument executed by the ruler personally by the king. The ruler of a state must declare that he accedes to the federation with the intent that the king, the Governor-General, the federal legislature. the Federal Court or any other federal authority (*e. g.*, Railway Tribunal, the Federal Railway Authority) shall by virtue of the Instrument of Accession executed by him,

but subject to the terms mentioned therein for the purpose of the federation, exercise in relation to his state such functions as may be vested in them by the Act or under the provisions of the Act. The states are invited to accept first 47 items out of the 59 items in the Federal Legislative List including items 58 and 59 for purposes of joining the federation. The extent of the federal authority in a state joining the federation may be extended but not diminished by a second Instrument duly executed. His Majesty is under no obligation to accept any Instrument. He may accept or reject any Instrument in his discretion which is absolute in this matter. Once the Instrument of Accession is accepted by His Majesty, its validity or the validity of any of its provisions can not be doubted or questioned. It is essential that every Instrument executed by the ruler must provide that certain provisions of the 1935 Act in Schedule 2 may be amended by, or by the authority of, the British Parliament without affecting the accession of a state. If the accession of a state is affected by any such amendment it must be accepted by the ruler by a supplementary Instrument.

To be valid every Instrument of Accession or a Supplementary Instrument must be executed by the ruler personally or ony person for the time being exercising the powers of the ruler whether by reason of the minority of the ruler or for any other reason. The Indian Legislature does not possess power over the accession of the states for twenty years after the establishment of the federation. But after this period every request for joining the federation must be sent to the Governor-General and also no request may be transmitted unless both house of the Indian legislature have addressed His Majesty asking that the state may be allowed to join the federation. Any Instrument of Accession as soon as it has been accepted has to be laid before Parliament and all courts have to take a judicial notice of every such Instrument as well as the fact of its acceptance.

Nature of the Instrument. The Instrument of Accession is the formal expression of a ruler's desire to join the federation, and its acceptance by the king makes a state a constituent member of the Indian federation, as soon as it is established. But the Instrument of Accession is not a treaty. Why ? Because the Indian states are not sovereign in international law. The Dominion of Canada has more international existence than the state of Baroda or Kashmir.

The Instrument is no better than a "petition for a privilege, an aspiration for an advantage," which the British king may be graciously pleased to grant or reject. The same view was expressed by J. H. Morgan in his preface to the Hyderabad Memorandum (Confidential).

The Instrument of Accession is not a contract also. Why ? Because its validity, as distinguished from the interpretation of its contents, can not be questioned by any court or tribunal. If the Instrument is neither a treaty nor a contract, then what is it ? It is a little more than a contract and little less than a treaty.

It may be said to be a legal document the contents of which are defined by an Act of the British Parliament. The courts of law will give effect to it in the same way as they give effect to a statute.

Thus whereas the British Indian Provinces have no choice in the matter of joining the federation because they must join, the rulers of states are free to join or not to join.

QUESTIONS AND TOPICS

1. Write a short note on the Instrument of Accession.

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Chapter 40.

THE FEDERAL EXECUTIVE.

Introductory. The superintendence, direction and control of the civil and military government of India was vested in the Governor-General-in-Council by the Act of 1919. The Governor-General in Council was subordinate to the Secretary of State for India and was to obey all orders of the latter. The Governor-General carried on his duties with the assistance of an Executive Council the members of which were appointed by His Majesty. There was no limit to the number of members of the Executive Council. Generally it consisted of seven members in addition to the Governor General. The Governor-General made rules for the transaction of business of the Council, fixed the time and place for its meetings, over which he presided and also appointed a vice president of the Council, who prsided over the meetings of the Council in his absence. The Covern or-General had a casting vote in case of a difference of opinion :he could also override the Council in certain matters. The Governor-General-in-Council was not responsible to the Indian Legislature but to the British Parliament through the Secretary of State for India. The Governor-General could restore a rejected or a reduced grant. In cases of emergency he could authorise expenditure, issue ordinances, make Governor-General's Acts if he considered all these necessary for the peace or safety of India.

The Federal Exective. Under the 1919 Act no element of responsibility was introduced at the centre. Under the 1935 Act some measure of responsibility is introduced, in the Central Government.

Extent of the Exective Authority of the Federation. The executive authority of the federation extends to the following matters :—

1. It extends to all matters for which the federaI legislature is empowered to make laws ;
2. to the raising of defence forces for the crown in British India ;
3. to the governing of the forces of the crown which are borne on the Indian establishment ; and
4. to the exercise of rights possessed by treaty, grant, usage, sufferance or other lawful means in respect of the tribal areas.

Limitations. The federal executive authority is limited by the following considerations :—

1. It does not extend to those matters in which the provincial legislatures are empowerd to make laws.
2. It is limited by the terms of the Instrument of, Accession This means that the federal executive authority extends

only to those matters for which a state has joined the federation and which are specified in the Instrument of Accession.

3. It does not extend over European forces as they are enlisted and enrolled outside India. But it extends to the Gurkha and Nepalese forces which are raised in territories adjacent to India.

Thus the executive authority of the federation is coextensive with the legislative authority of the federation.

But is it true to say that the executive authority of the federation is absolutely absent in the provincial field ?

No.

Why ?

The answer is simple. According to the Act the special responsibility of the Governor-General is for the prevention of menace to the peace and tranquillity of the whole of India or any part thereof.

Secondly, the constitution makes provision for the enforcement of the executive authority either through federal agencies or through the provincial governor who can be compelled by the Governor-General to obey his orders.

In regard to Indian states the executive authority of the federation is to be exercised by the rulers of the states. If the princes fail in their duty to exercise the executive authority of the federation, the Governor-General can direct them to enforce federal authority (Sections 125, 126). But if the princes defy the federal authority or refuse compliance, what will happen ? An interesting situation will be the result.

The Act does not make any provision nor does it provide any machinery to deal with such an interesting and full of grave consequences, situation. Perhaps paramountcy may be invoked in such a situation but paramountcy is a thing outside the constitution.

The Governor-General. Under the New Act the executive authority and power of the federation is vested in the Governor-General as the representative of the king. The federal government set up under the 1935 Act is a dyarchical government. The federal executive consists of two parts, *viz.*, the Governor-General and his Council of Ministers and the Governor-General and his Counsellors. One school of thought objects to the inclusion of the Governor-General's counsellors in the Reserved or Excluded Departments in the federal executive since, it is said, they have no executive responsibility placed on their shoulders by the Act of 1935. It is the Governor-General alone who is responsible for Excluded or Reserved Departments.

The Governor-General exercises the power of prerogative also as a representative of the king but only to the extent delegated by the king and not inconsistent with the Act. His

salary; allowances and leave allowances [According to the budget for 1937—38 these amounted to Rs. 15,54,000 excluding the charges for the Band and Bodyguard which in the same budget cost an aggregate sum of Rs. 1,84,600] are charged on the revenues of the federation and are not only exempt from the vote of the Indian Legislature but can not be discussed even.

Administration of Federal Affairs. The Governor-General is the head of the dyarchical federal government. He exercises the executive authority of the federation in a two-fold manner. Federal subjects are divided into two classes :—

1 Those reserved to the Governor-General and
2. Those committed to the charge of the ministers.

1. The Reserved Departments are :—
   (*a*) Defence,
   (*b*) Ecclesiastical Affairs and
   (*c*) Administration of Tribal Areas.

These departments are administered by the Governor-General in his discretion. And as he can not bear so heavy an administrative burden, he is given a body of three counsellors appointed by himself. to assist him in the performance of his functions. The salaries and conditions of appointment of these counsellors are fixed by His Majesty in Council. These counsellors are ex-officio members of both the houses of Indian Legistature. They have no right to vote but they can take part in the debates to defend their departments. In the matter of the administration of the department of defence consultation with the ministers by the Governor-General is recommended under the provisions of the Instrument of Instructions. The Minister of Finance must be consulted before defence estimates are finally settled and placed before the federal legislature.

Discretionary Powers of the Governor-General. These Reserved Departments of government are formally excluded from the scope of ministerial responsibility and are administered in the discretion of the Governor-General. Besides these the Governor-General is empowered by the 1935 Act with innumerable powers and functions to be exercised 'in his discretion'. In these matters the Governor-General bears responsibilities to the Secretary of State for India to whom he is subject and whose orders he must obey.

When the Governor-General acts in his discretion in any matter it means that there is no obligation on his part to consult his ministers. But while he acts in his individual judgment it means that he must presumably consult his ministers though he may not feel obliged to follow their advice and the fact that he has not accepted the advice of his ministers does not make his act invalid simply because it was not in accordance with the advice tendered by the ministers.

The following are the more important of the discretionary powers of the Governor-General. Sections of the Act of 1935 giving these powers are also quoted.

No.	*Section. sub-sec.*	*Discretionary powers.*
1,	(9)	1. General power.
2.	(9)	2. Presiding at the meetings of the Council of Ministers.
3.	(9)	3. To decide questions in dispute as to whether a particular matter was a matter for the individual judgment of the Governor-General or his discretion.
4.	(10)	10. Selection, summoning and dismissing of ministers.
5.	(10)	3. Fixing of the salaries of the ministers until fixed by the legislature.
6.	(15)	4. Appointment of Financial Adviser, dismissal and fixing of his salary and allowances as also the number of his staff and the conditions of service. It is provided by the Act that the Governor-General must consult the ministers before making any appointment after the first appointment as to the person to be selected.
7.	(17)	2. To make rules for the authentication of the instruments and orders of the federal government.
8.	(17)	3. Making of rules for the convenient transaction of the business of the government and the distribution of work among the ministers.
9.	(17)	4. Making of special rules for the purpose of keeping the Governor-General informed.
10.	(19)	2. To summon and prorogue the chambers of the federal legislature and dissolution of the Federal Legislative Assembly.
11.	(20)	1. Addressing the Federal Legislature.
12.	(20)	2. Sending of messages to the federal legislature in regard to pending bills.
13.	(22)	3. Appointment of acting Chairman of the Council of State in the vacancy of the President and the Deputy President.
14.	(26)	1. (*e*) The fixing of the period for removal of disqualification due to sentence of imprisonment or transportation.
15.	(26)	1. (*f*) The removing of disqualification due to failure to lodge election expenses return.
16	(31)	1&2. To summon joint meetings of the two houses of the federal legislature.

17.	(32)	1.	Assenting to bills, withholding assent, disallowing bills, or reserving bills for the consideration of His Majesty. Also returning bills to the legislature for reconsideration.

No.	*Section.*	*Sub-sec.*	*Discretionary Power—contd.*
18.	(33)	4.	Deciding whether any expenditure is chargeable on the revenues of the federation or not.
19.	(38)	1.	To make rules of procedure for the Council of State and the Federal Legislative Assembly in regard to business which involves Governor-General's discretion or individual judgment. Secondly, the completion of financial business in time. Thirdly, prohibition of discussion or asking questions regarding a foreign state or ruler. Fourthly, prohibition of discussion or asking questions regarding Indian states and the dignity of their rulers. Fifthly, discussion or asking questions on matters with regard to tribal or excluded areas. Sixthly, discussions or questions regarding Governor-General's discretionary action in relation to provincial matters, or discussion or questions regarding personal conduct of any Indian Ruler or a member of any ruling family, and consent to waive all these.
20.	(38)	2.	To make rules of procedure at joint sittings of the federal legislature.

Comment on the Discretionary Powers of the Governor-General. The above list of the discretionary powers of the Governor-General is by no means exhaustive. There are at least thirty more sections which empower the Governor-General to act in his discretion. It is impossible to comment in any detail upon each of these powers. But it needs to be pointed out that the exercise of these powers by the Governor-General in his discretion must have serious and damaging consequences to the economic well-being and political awakening of the people of India. It is also obvious that a very substantial portion of the normal powers and functions which usually belong to responsible ministers in all parliamentary democracies, have been taken away from the responsible ministers of the federation of India. What will be the actual reaction when these powers are exercised can not be forecast because all experience of such exercise has yet to come. One thing is certain and that is, that the exercise of these powers by the Governor-Generals hows an utter lack of confidence by the British Government in the capacity of Indians to manage their own house.

2. The Governor-General administers those subjects committed to the charge of ministers with the aid of his ministers.

Council of Ministers. There is a Council of Ministers to aid and advise the Governor-General and for the administration of federal affairs. The number of ministers must not be more than ten (Section 9).

Appointment. The ministers of the Federation of India are selected and sworn by the Governor-General. They hold office during his pleasure and are dismissable by him in his discretion. The ministers cease to hold office if they fail to be elected as members of either house of the federal legislature within six months of their appointment to the office. Their salaries are determined by the Governor-General till they are fixed by the federal legislature. The salaries of the ministers may not be varied during their term of office. The nature and the advice which the ministers tender to the Governor-General can not be a question of inquiry in any court It is left to the Governor-General in every case 'whether or not to act or to exercise his individual judgment.' If any question arises whether any matter falls within his individual judgment or discretion the Governor-General's decision in the matter is final and the validity of anything done by the Governor-General can not be questioned on the ground that the Governor-General ought or ought not to have acted in his individual judgment or exercised his discretion. Further as to the question whether a particular subject falls under the Reserved half or belongs to those subjects committed to the charge of ministers the Governor-General may take the advisory opinion of the Federal Court (Section 213). Again under Section 4 of the Privy Council Act His Majesty may refer any question to the Judicial Committee of the Privy Council. The Governor-General in his discretion may preside at the meetings of the Council of Ministers. The following is the list of powers in which the Governor-General may exercise his individual judgment:

Powers of the Governor-General in his individual judgment and his special responsibilities.

No.	*Section.*	*Sub-sec.*	*Special responsibilities.*
1.	(*a*)	1.	General
2.	(12)	1.	Special responsibilities of the Governor-General, *viz.*:—
3.			(*i*) Prevention of grave menace to peace and tranquillity of India.
4.			(*ii*) Safeguarding financial stability and credit of Federal Government.
5.			(*iii*) Safeguarding legitimate interests of minorities.
6.			(*iv*) Safeguarding legitimate interests of public services.
7.			(*v*) Securing by executive action enforcement of anti-discrimination provisions (Sections 111—121).

8.			(*vi*) Preventing discrimination against goods imported from U. K. or Burma.
No.	*Section.*	*Sub-sec.*	*Discretionery Powers—concld.*
9.			(*vii*) Protection of the rights of the states and the rights and the dignity of their rulers.
10.			(*viii*) Sending adequate funds for due discharge of these, and of functions to be discharged in his discretion.
11.	(16)	1 &3.	Appointment, dismissal and payment of the Advocate General.
12.	(52)	1 (*a*)	Promulgating ordinances under special emergencies.
13.	(151)		The making of rules for the custody of public money.
14.	(152)	2.	Nominating and removing Directors of the Reserve Bank.
15.	(184)	1.	The making of rules for the convenienl transaction of business between the Federat Government and Railway Authorities.
16.	(216)	2.	To include the expenses of the administration of the Federal Court in estimates of expenditure placed before the federal legislature.
17.	(246)	2.	Appointments and postings to Reserved posts in connection with federal affairs.
18.	(262)		Declaration of eligibility of Rulers or subjects of particular Indian states not being federated states to hold permanent or temporary civil posts under the crown.
19.	(302)	1.	Appointment of High Commissioner for India, his salary, and conditions of service.

It needs hardly to be pointed out that the sphere of exercising individual judgment and of special responsibilities of the Governor-General removes the best part of the governmental affairs from the hands of the popular and responsible ministers. It is argued that the matters of special responsibility of the Governor-General are vital for the security and safety of India and the Legislature may attempt to deal with those matters in a manner which may not be conducive to the best interests of the country. But it may also be pointed out that to take away the best part of the affairs of government from the province of the federal legislature and the popular ministers is to demonstrate an unqualified distrust of the people themselves and their trusted representatives. So long as these special responsibilities and powers in individual judgment exist the popular ministers are liable, "at every stage, to be kept out of their legitimate sphere of responsibility,....., to be thwarted and overridden; baffled and frustrated in their attempt to add to the prosperity and self-respect of the people."

According to Section 17 of the Act the ministers and secretaries are required to draw the attention of the Governor-General to any matter in which he has a special responsibility.

The Governor-General may require the Minister of Communications and the Railway Board to afford facilities for troop movements. He may even order the Governors of the provinces to give necessary directions in regard to the control of buildings, lands, etc. In these matters the Governor-General is subject to the Secretary of State for India whose orders he must obey.

The Financial Adviser and the Advocate General. Under Section 15 of the Act the Governor-General is made responsible for the financial stability and credit of the Federation. In order to discharge this function the Governor-General may appoint a financial adviser. He will be consulted by the Governor-General upon any matter of finance involving his special responsibility. He is essentially an adviser of the Governor-General, but his advice is available to any minister and the Federal Government His salary, allowances, staff and conditions of service are determined by the Governor-General.

The Indian national opinion does not favour this functionary. It is argued that there is every possibility of this officer becoming the watch-dog of the financial interests of the British people and government in this country. It is further said that the appointment of this functionary may seriously hamper the work of the federal minister of finance.

The Advocate General. The Governor-General is empowered to appoint a person qualified, to be a judge of the federal court as the Advocate General. His duties are to give legal advice to the federal government and to perform such other legal duties as are assigned to him by the Governor-General. He has no political affiliation with the federal ministry. He will also advise the Governor-General and his counsellors. He has the right of audience in all law courts in British India and in cases in which federal interests are involved in all courts in federated states. The powers with regard to his appointment and dismissal are exercised by the Governor-General in his individual judgment. The Advocate General has the right to address both houses of the federal legislature.

Summary of the Powers of the Gavernor-General. As has been noticed some of the powers of the Governor-General relate to the reserved subjects, while others concern the transferred subjects while still others have to do with his special responsibilities. However we may classify all the powers of the Governor-General as (A) Legislative, (B) Executive and (C) Financial.

A. Legislative Powers of the Governor-General. 1. He can summon or prorogue both the houses or dissolve the Federal Assembly.

2. He can address both the houses of legislature or either of them.

3. He can send messages to either house with respect to a bill which may be pending or otherwise.
4. He can summon the two houses of legislature to meet in a joint session.
5. He can appoint a member to perform the functions of the president or the deputy president of the upper house (Council of State) when there is a vacancy of that office.
6. He can assent or withhold his assent, in His Majesty's name, from a bill passed by the federal legislature. He can also reserve such bill for the signification of His Majesty's pleasure. He can also return such bill to the legislatute with a message to reconsider the bill or any part thereof.
7. His consent is necessary with regard to certain matters which may be discussed and on which interpellations may be made in the federal legislature.
8. His previous sanction is necessary to the introduction of certain bills.
9. Power of issuing ordinances :-—
   1. He can issue ordinances during the recess of the federal legislature.

   Note. The Governor-General is authorised to issue an ordinance, during the recess of the federal legislature, if he is satisfied that circumstances have arisen which demand prompt action. An ordinance thus issued has the same force of effect as an act of the federal legislature. Every such ordinance is to be laid before the federal legislature and ceases to be effective six weeks after the assembling of the federal legislature if both the Houses have not already disapproved it by a resolution. Such an ordinance may be disallowed by His Majesty and the Governor-General himself may withdraw it any time.

   2. The Governor-General can issue ordinances, if required by circumstances, for the satisfactory discharge of his duties which involve the exercise of his individual judgment or discretion,

      An ordinance of this kind remains in force for six months and can be extended for a further period of six months by another ordinance. This specie also has the same force and effect as the act of the federal legislature. In case of an extension it has to be communicated to the Secretary of State. It is subject to disallowance by His Majesty and the Governor-General also may withdraw it any time.
10. The Governor-General can make Governor-General's Acts which have the force of federal laws.

If at any time it is considered necessary by the Governor-General to enact legislation for the proper and satisfactory discharge of his functions involving his discretion or individual judgment he may inform the federal legislature of such circumstances and either.

(*a*) attach to his message a draft of the bill which he considers necessary. If the federal legislature passes such a draft bill well and good, otherwise after the expiry of one month he may enact that bill as the Governor-General's Act with such amendments as he considers necessary. He may consider amendments proposed in the legislature of the address presented to him within the month by the houses of legislature.

Or

(*b*) He may not do the above but enact forthwith the Governor-General's Act. Such an Act is subject to disallowace by His Majesty and is to be communicated to the Secretary of State for India and is to be laid by him before the houses of parliament.

B. The **Executive Powers of the Governor-General.** The executive powers of the Governor-General may be summarised as follows:

1. He has exclusive powers of control over the Reserved Departments as well as over the Administration of Tribal Areas.
2. With regard to matters in which he has special responsibilities he can over-rule both the Federal Legislature and the Council of Ministers.
3. He selects and summons his Council of Ministers.
4. Fixes their salaries until these are determined by the federal legislature.
5. Appoints and dismisses the financial adviser and determines his salary, allowances, staff and conditions of their service.
6. Appoints the Advocate General and determines the conditions of the service.
7. Can appoint the Acting Chief justice of the Federal Court.
8. Can ask the Federal Court to give its opinion on matters referred to the court by him.
9. Approves the rules of the Federal Court.
10. Can appoint an Auditor of Indian Home Accounts.
11. Has the power to assign income-tax to the provinces.

12. Commute, remit or suspend sentences of death.
13. Confer honours, etc.

C. Financial Powers. The financial powers of the Governor-General are very extensive.

1. He will administer the non-votable part of the budget which is about 80% of the total expenditure.
2. He has to see that a statement of the estimated receipts and expenditure of the federation for every financial year is laid before the legislature.
3. It is he who decides whether a proposed expenditure can be charged on the revenues of the federation.
4. He may summon the two Houses of Legislature in a joint sitting for deliberating and voting on demand.
5. He can direct a demand rejected or reduced by the Federal Assembly to be submitted to the Council of State in its original form.
6. He can restore a rejected or reduced demand.
7. He can recommend all demands for grants. In fact no demand for grant can be made except on the recommendation of the Governor-General.
8. Before being introduced in the federal legislature all finance bills must receive his assent, Without his assent no bill or amendment which imposes or increases a tax, or regulates the borrowing of money or the giving of any financial guarantee by the Government of the Federation, or amends the law in respect of its financial obligations, or levies a charge on the revenues of the federation can be introduced in the federal legislature.

Powers to suspend the Constitution. According to Section 45 of the Government of India Act, 1935, if the Governor-General is satisfied at any time that circumstances have arisen in which the government of the federation can not be carried on in accordance with the provisions of the Act, he may by proclamation declare thaf—

1. his functions as specified in the proclamation will be exercised by him in his sole discretion.
2. He assumes to himself, all or any of the powers vested in or exercisable by any federal Authority, except the Federal Court. The Governor-General is not empowered to assume any of the powers of the Federal Court, nor he is authorised to suspend the work of the Federal Court.

A proclamation of this kind may be varied or revoked by a subsequent proclamation. A proclamation issued by the Governor-General—

1. must be communicated forthwith to the Secretary of State for India and must be laid by him before each house of parliament.

2. Such a proclamation ceases to operate at the expiry of six months, unless it is a proclamation revoking a previous proclamation. If, however, a resolution is passed by both the houses of parliament approving its remaining in force, the proclamation will remain in force for a further period of twelve months.

If this state of emergency continues and the government of the federation is carried on by proclamation for three years, the proclamation shall cease to have effect at the end of that period. During this period parliament will take steps to make any changes in the provisions of the Act to carry on the feedral government.

Again if the Governor-General assumes the power of law-making by proclamation the laws that he makes will remain in force until a period of two years has elapsed from the date on which the proclamation ceases to have effect. Such laws may be re-enacted or repealed by the legislature before that date.

Instrument of Instructions to the Governor-General. An Instrument of Instructions is issued by His Majesty to the Governor-General on his appointment. The instrument embodies instructions and directions as to the manner in which the Governor-General should act in matters for which he is authorised to exercise his discretion and individual judgment as well as those in which he has special responsibilities. The Instrument containing these instructions and directions supplements the Government of India Act, 1935. The Secretary of State for India is required fo lay its draft before Parliament. Action can only be taken on it on the presentation of address by parliament to His Majesty. Even the amendment or the revocation of the Instrument of Instructions is required to be approved by both the houses of parliament. It may be pointed out here that the practice with regard to the dominions differs from that in regard to India. In the case of dominions its issue is a prerogative of the crown and it does not require to be sanctioned directly by the parliament In the case of India also under the Act of 1919 the practice was the same. But under the Act of 1935 it has been changed. Now, as already said, the Instrument of Instructions to the Governor-General of India is issued in the name of the crown as if in the exercise of his prerogative, but is required to be sanctioned by the two houses of parliament.

What is the reason for this change?

It is quite simple. The British Parliament desires to control the growth and working of the Indian constitution. In the case of the dominions the Instrument was utilised for the development of responsible government by making necessary adjustments by the crown. Obviously parliament does not like to commit this mistake in the case of India, and therefore it is required that even the amendments in the Instrument must be sanctioned and approved by the Parliament.

What do the Indians think of the Instrument?

They fear that the necessity for parliamentary sanction may obstruct the organic growth of the Act of 1935.

Under the Instrument of Instructions the Governor-General of India is directed to—

1. include as far as possible in his ministry not only members of important minority communities, but representatives of those rulers of states also who have acceded to the federation.
2. He is also directed to encourage collective responsibility as far as possible.
3. He is directed to select his Council of Ministers in a manner usual in selecting a cabinet.

But the validity of any act of the Governor-General can not be questioned on the ground that it was not done by him in accordance with the instructions and directions contained in the Instrument of Instructions issued to him. The Secreary of State for India must satisfy himself that his orders or directions to the Governor-General are not such as to require tha officer to act in a manner inconsistent with any Instrument issued to him by His Majesty (Section 14).

Nature of the Executive. We may say in conclusion that the federal executive is dyarchical in character and therefore suffers from its defects. The powers of discretion, individual judgment and special responsibilities of the Governor-General limit the sphere of responsible government at the centre. The ministry constituted under the Act will be of heterogeneous character with no common policy or common purpose. The Governor-General dominates the federal executive. He has been made the linch pin of the whole system. He is the keystone of all this mighty edifice. If the Governor-General fails nothing can save the system set up under the Act. The entire executive machinery of the federation will be under the absolute control of the Governor-General. Thus the Federal Government in reality is a one man's rule, unrivalled in many respects by oriental despotism on the past or modern dictatorships.

India can not stand a comparison with dominions in this respect. In the dominions the principles of parliamentary government as in operation mean that

1. the representative of the crown is bound, in the exercise of his power, prerogative or statutory, in political matters to follow the advice tenderd by his ministers.
2. Ministers must be members of either house of legislature.
3. Ministers must possess the support of the majority of the lower house.
4. Ministry is formed by the prime minister who recommends the names of his colleagues for office. There is collective responsibility.
5. Salaries of the ministers are subject to the vote of the legislature.

In India the Governor-General, the representative of the crown, is not bound to follow the advice of his ministers. The sphere of the action of the ministry is restricted. Ministers are appointed by the Governor-General and bold office during his pleasure. The salaries of the ministers are not subject to the vote of the Federal Legislature thus making an effective weapon to enforce responsibility ineffective. The federal executive in India is anything but responsible. What is it then? A mixture of heterogeneous elements.

But in the present political conditions in India, the absence of well disciplined, instructed and organised political parties, divided not by broad issues of political and economic policy but by narrow sectional and communal interests, the nature of the federal executive could not be otherwise than what it is.

QUESTIONS AND TOPICS

1. Describe the changes introduced in the Central Government under the Act of 1935.
2. Describe the position, powers and functions of the Governor-General under the Act of 1935 clearly stating his special responsibilities and special powers.
3. Discuss the position of the federal ministers under the Act of 1935.
4. Write a short note on the Instrument of Instructions.

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CHAPTER 41.

THE FEDERAL LEGISLATURE.

Introductory. The Federal legislature under the Act of 1935 will be bi-cameral, as the present Indian legislature is. The federal legislature will consist of the Governor-General (as representative of the king), and two houses—the Federal Assembly and the Council of State. Of these the first chamber will be the federal assembly and the second the Council of State. We will first take the Federal Assembly into consideration.

The Federal Assembly : composition. The Federal Assembly is to consist of 250 members representing the provinces and 125 members representing those states which have acceded to the federation thus making a total strength of 375 members. These 250 seats have been distributed among interests and communities in British India as :

1.	General seats including 19 seats for the Scheduled castes	—	105
2.	Muslims	...	82
3.	Sikhs	...	6
4.	Europeans	...	8
5.	Indian Christians	...	8
6.	Anglo-Indians	...	4
7.	Commerce and Industry ...	...	11
8.	Labour	...	10
9.	Landholders	...	7
10.	Women	...	9
		Total	250

Among the provinces these seats are distributed as follows :

Madras	...	...	37
Bombay	...	...	30
Bengal	...	...	37
United Provinces	...	...	37
Punjab	...	...	30
Bihar	...	...	30
C. P. and Berar	...	...	15
Assam	...	...	10
N. W. F. Province	...	...	5
Orissa	...	...	5
Sind	...	...	5
British Baluchistan	...	...	1
Delhi	...	...	2
Ajmer Merwara	...	...	1
Coorg	...	...	1
Non-Provincial seats	...	...	1
		Total	250

Method of election. The representatives of British India are to be elected by the indirect method of election. This is a step backwards. Under the Reforms of 1919 the method of election to the Legislative Assembly was direct. The basis of this election will be communal. It means that the members of the Federal Assembly will be elected from constituencies, each composed of the representatives of one community in a provincial legislature. Each communal group will vote for and elect its representative quite independently of other communal groups. For example, all the Muslim members of any provincial lagislative assembly will form one constituency ; in the same way will the Europeans, Anglo-Indians, Indian Christians and Sikhs constitute themselves into separate constituencies. In the case of the election of the representatives of the scheduled castes, persons elected at the primary elections of the provincial assembly shall form an electoral college. They will elect four candidates for one seat ; of these four one will be elected by the General Electorate. The four non-provincial seats are to be filled in accordance with the votes of Federated Chambers of Commerce, Asscciated Chambers of Commerce, commercial bodies in Northern India and labour organisations respectively.

With regard to the seats allotted to the states they are to appoint their representatives in such manner as they like. The seats assigned to the states are somewhat proportionate to their population and other considerations have also been taken into account while allocating seats to them. For example Hyderabad has sixteen seats with a population of 14,436,148, Mysore with a population of 6,557,302 has seven seats. The smaller states will form groups to send a representative.

It needs to be pointed out that the states represent only one-fourth of the total population of India, but they have 33½ per cent. representation in the Federal Assembly. Thus they have been given enormous weightage. It must also be pointed out that whereas all lower chambers represent the nation on the basis of territorial constituencies and are elected directly, in India it is otherwise. Perhaps the method of indirect election was adopted to keep away progressive elements in India from entering or dominating the Assembly. But the success of the Congress in the provinces has neutralized the value of this device by which the framers of the Act of 1935 wanted to obstruct the progress of political consciousness in this country.

Franchise. Election to the Federal Assembly is indirect through the legislatures of the provinces, therefore the question of franchise for the Assembly does not arise. But there are certain qualifications which are required by any one who desires to stand for a seat in the Assembly.

(*a*) He or she must be a British subject, or the ruler or subject of an Indian state which has acceded to the Federation ;

(*b*) He must be twenty-five years of age ; and
(*c*) Possess such other qualifications, if any, as may be prescribed.

The ruler or subject of an Indian state which has not joined the Federation is not qualified under (*a*) if he or she is eligible to a seat in the provincial legislature.

Disqualifications. A person is disqualified for being elected as, and for being a member of either chamber :

1. If he holds any office of profit under the crown, not being ministerial office or membership of service of the crown retained while serving in a state.
2. If he is of unsound mind and has been declared so by a competent court.
3. If he is an undischarged insolvent.
4. If he has been convicted of offences in connection with elections declared by Order-in-Council or by a Federal Act to disqualify for membership of the legislature, unless the specified period in that Order or Act has elapsed.
5. If he has been convicted of any other offence by a court in British India or a federated state and sentenced to transportation or to imprisonment for not less than two years, or such less period as the Governor-General in the exercise of his discretion, may allow in any particular case, has elapsed since his release.
6. If he has failed to lodge a return of election expenses within the time and the manner prescribed by an Order-in-Council or as required by law, unless five years have elapsed sine the date appointed for lodging the return, or the Governor-General in his discretion has removed the disqualification.

If any one who is not qualified or disqualified for membership of the federal legislature or when he is forbidden to do so, sits and votes in either chamber he is liable to be fined five hundred rupees for each day he sits and votes in the legislature as a debt due to the federation.

If a person is elected a member of both the houses he must resign his seat in one of the houses. Either house may declare the seat of a member vacant, if any member absents himself from the meetings of the House for sixty days without the permission of the house of which he is a member.

Tenure. The Federal Assembly is elected for a period of five years. At the end of this period there will be new elections. The Governor-General has the power to dissolve the Assembly earlier than the expiry of five years.

The Council of State : composition. The Council of tate will be composed of 260 members. Of these 156 will

represent British India and not more than 104 representatives of the Indian states. The number of the states' representatives depends upon the number of states acceding to the federation.

Out of these 156 seats, 150 will be elected and six nominated by the Governor-General of India among various communities as follows :

1.	General Seats	...	75
2.	Muslims	...	49
3.	Scheduled castes	...	6
4.	Sikhs	...	4
5.	Women	...	6
6.	Europeans	...	7
7.	Indian Christians	...	2
8.	Anglo-Indians	...	1

The 150 seats in the Council of State allotted to British India are territorially distributed as follows :

1.	Madras	...	20
2.	United Provinces	...	20
3.	Bengal	...	20
4.	Bombay	...	16
5.	The Punjab	...	16
6.	Bihar	...	16
7.	The C. P. and Berar	...	8
8.	Assam	...	5
9.	N. W. F. Province	...	5
10.	Sind	...	5
11.	Orissa	...	1
12.	British Baluchistan	...	1
13.	Delhi	...	1
14.	Ajmer-Merwara	...	1
15.	Coorg	...	1
16.	All-India seats :	...	1
	(*a*) Anglo-Indian	...	2
	(*b*) Indian Christian	...	7
	(*c*) European	...	
	Total	...	150

The representatives of the federating states will be nominated by the rulers of the states. In the allocation of seats to the states their status, salute, pupulation, size and other considerations have been taken into consideration. The state of Hyderabad is assigned five seats while that of Patiala two. The smaller states have been grouped into various groups, each group electing one or more representatives.

Method of Election. The representatives of British India in the Council of State are elected directly on communal basis. This is an innovation. In almost all federations, the upper chamber secures the representation of the units of the federation on a footing of equality irrespective of their size, importance or population. For example, in America the state of California

and the state of Wymong each send two senators to the senate of the United States of America though both of the states are unequal in area, population and importance. One of the several objects of the federal union is to preserve the identity of the federating units and this is secured, as has been said, by preserving their equality as regards status and also by giving them representation in the upper house on a basis of equality. The election to the upper chamber is almost always indirect—by the legislatures of the federating units—and not directly by the people. It means that the upper House in a federation represents the legislature of federating units. But in India this principle is not followed and the election to the Council of State has been made direct for the representatives of British India with the exception of six representatives who are to be nominated by the Governor-General.

It may further be noted that though the states represent only one-third of the population of British India and one-fourth of the total population of India they have got 40 per cent of the representation in the Council of State instead of 25 per cent.

Franchise. The qualification for the voters are very high and are on the same basis as those prescribed for the Council of State under the Act of 1919. But the franchise has been widened to some extent to make the total number of voters 1,000,000. There could be no better house composed on the basis of conservatism and vested interests than the Council of State under the Act of 1935. There are certain disqualifications which debar the persons from being members of the Council of State. They are the same as those for the Federal Assembly which have been discussed.

Tenure. Under the Government of India Act, 1935 the Council of State is a permanent body. It cannot be dissolved. Members are elected for a period of nine years but one-third retire every three years, another third at the end of six years and the last third at the end of nine years. The retirement of each third of the house is determined by the casting of lots immediately the house is elected.

The Officers of the Federal Legislature. Each house of the federal legislature is allowed to choose a presiding officer and his deputy. The Council of State will elect two of its members as President and Deputy President. The President is to preside at the meetings of the council and conduct its business and see that the rules of procedure are observed as well as to give rulings when necessary. In the absence of the President these functions are performed by the Deputy President. They hold their office so long as they are members of the house but they can resign their office if they desire. Both can be removed from office by a vote of no confidence passed by the Council of State at a fourteen days' notice. Their salaries are fixed by the Governor-General until fixed by the legislature. When both the President and the Deputy President are absent the Governor-General can appoint any member of the Council of State to perform the functions of the President.

The Federal Assembly elects its own presiding officer and his deputy. These are known as the Speaker and the Deputy Speaker respectively. The powers, functions and conditions of service are the same as those of the President and Deputy President of the Council of State. The President or the Speaker do not vote normally but in the case of a tie they have a casting vote.

Quorum. One-sixth of the total number of members of each House constitute the quorum. In the case of a lack of quorum the President or the Speaker can adjourn or suspend a sitting of the House concerned until the quorum is made up.

Salaries and Allowances of the Members of the Federal Legislature. The Act of 1935 provides that the salaries and allowances of the members are to be fixed by the Federal Legislature. Until this is done the allowances etc., paid to the members of the present legislature will be paid to the members of the new Federal Legislature.

Rights and Privileges of the Members. Members of the Federal Legislature enjoy complete freedom of speech. They are not to be punished for any thing said on the floor of each house, or for publishing any report by the order of either house of the legislature. But there are certain restrictions. For example, members can not discuss the official conduct of any judge either of the Federal Court or of any High Court.

Procedure. Procedure of a legislative body is a matter of great constitutional importance. It is on the legislative procedure that the relative position of the two houses of legislature, their responsibilities, position and powers depend.

Under the Act of 1935 each house of legislature makes rules for regulating its procedure and the conduct of its business. But the Act authorises the Governor-General to make rules of procedure, after consultation with the Speaker of the Assembly or the President of the Council as the case may be, with regard to the following :

1. for regulating the conduct of business in either House concerning reserved subjects or those involving his special responsibilities.
2. For the purpose of securing timely completion of the financial business of the federal government.
3. For prohibiting the discussion of or asking questions on any of the following :
   (*a*) any matter connected with an Indian state (permission may be given if the matter in question affects British or Federal interests),
   (*b*) on foreign policy,
   (*c*) on any matter connected with provincial, tribal or excluded areas,
   (*d*) on the conduct of any ruler or any member of ruling family of any India state.

4. For arranging for the joint sittings of the two houses of the federal legislature after consultation with the Speaker and the President.

The Act authorises the Governor-General to withhoid his assent from a bill or to reserve it for the signification of His Majesty even after giving his sanction for the introduction of a bill. It is also laid down that the validity of any proceedings in the federal legislature can not be questioned on the ground of any irregularity of procedure.

Legislative Procedure. The legislative procedure of the federal legislature may be studied under two heads :

1. General legislative procedure and
2. Procedure with regard to the financial matters.

General Legislative Procedure. (*a*) Any bill, other than a finance bill, may originate in either house of the federal legislature.

(*b*) A bill is deemed to have been passed when both the houses have agreed to it including amendments if any. It becomes an act only when the Governor-General assents to it and becomes an act only when the Governor-General promulgates it.

(*c*) A bill pending in the federal legislature does not lapse when the legislature is prorogued. But a bill originating in the federal assembly and pending before it lapses on the dissolution of that body.

(*d*) The Governor-General can summon a joint sitting of the two houses for considering and voting upon a bill if one of the houses has refused to agree to it, or to any amendment or six months have elapsed since a bill passed by one house was sent to the other and the latter has not presented that bill for the assent of the Governor-General.

(*e*) In the case of a finance bill or a bill touching any matter relating to the reserved subjects and to the special responsibilities of the Governor-General, a joint session of the two houses may be called by him at any time if he is satisfied that delaying tactics are being deliberately employed.

(*f*) In a joint session a bill is deemed to have passed if a majority of the members present and voting casts their votes for the bill.

(*g*) After a bill has been passed it is presented to the Governor-General who may do any of the following things :

1. May assent to the bill in His Majesty's name ;

Or

2. May withhold his assent ;

Or

3. May reserve it for the signification of His Majesty's pleasure ;

4. May return the bill to the houses requiring them in a message to reconsider the bill or any part of it, or he himself may recommend any amendments to the bill.

5. Any bill assented to by the Governor-General may be disallowed by the crown within twelve months from the date on which assent was given to it.

2. **Procedure in regard to Financial Bills**. A financial bill which means a bill which (*a*) imposes or increases any tax, (*b*) regulates the borrowing of money or gives any financial guarantee by the federal government, or (*c*) amends the law in respect of any financial obligations undertaken or to be undertaken by the government of the federation, or (*d*) declares any expenditure charged on the revenues of the federation cannot be introduced without the recommendation of the Governor-General. Financial bills can originate in the lower house only.

But if a bill or an amendment to a bill provides for the imposition of fines or other financial penalties or for the demand of payment of fees for licences, or for services rendered it can originate in the upper house of the federal legislature.

The Budget. The Act of 1935 requires the Governor-General to lay before the Federal Assembly and then before the Council of State an annual statement of the estimated receipts and expenditure of the federation.

The estimates of expenditure in the budget must show separately the following:

1. The moneys required to meet expenditure charged on the revenues of the federation by the Act.
2. The sums needed to meet other expenditure proposed to be charged on the revenues of the federation.

The moneys charged on the revenues of the federation are:

1. The salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order-in-Council.
2. Debt charges for which the federation is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.
3. The salaries and allowances of ministers, of counsellors, of financial adviser, of the Advocate General, of chief commissioners and of the staff of the financial adviser.
4. The salaries, allowances and pensions payable to or in respect of judges of the federal court, and the pensions payable to or in respect of judges of any High Court.
5. Expenditure in relation to the reserved departments.

6. The moneys payable to His Majesty under this Act for the discharge of the functions of the crown in relation to Indian States.
7. Any grants relating to the administration of excluded areas in the provinces.
8. Any sums required to satisfy anv judgment, decree or award of any court or arbitral tribunal.
9. Any other expenditure declared by this Act or any act of the federal legislature to be so charged.

These heads charged to the revenues of the federation constitute 80% of the total revenues of the federation. These with the exception of the salaries and allowances of the Governor-General and the moneys payable to His Majesty may be discussed by the federal legislature, but are excluded from the vote of the federal legislature, The expenditure not so charged on the revenues of the federation constitutes 20% of the revenues of the federation. This 20% is to be submitted to the vote of the federal legislature in the form of demands for grant. It is only with the recommendation of the Governor-General that a demand for grant can be made by a minister.

Each house of legislature is free either to reduce, reject or accept a demand for grant. If a demand for grant has been refused by the assembly it is not submitted to the Council of State unless the Governor-General directs to the contrary. But if the Federal Assembly has reduced the demand, it is to be submitted to the Council of State unless the Governor-General directs to the contrary.

In case of a disagreement between the houses on any demand the Governor-General is authorised to call a joint sitting at which the majority decision will prevail.

When the grants have been made by the federal legislature the Governor-General is required to authenticate these grants and the charges on the revenue of the federation by his signature. In the exercise of his individual judgment the Governor-General may restore any grant reduced or rejected by either house of the federal legislature. The authenticated schedule is to be placed before the federal legislature which can neither discuss it nor vote upon it. It is this authenticated schedule which constitutes the legal authority for the expenditure for the financial year.

Pwers of the Federal Legislature. The powers of the federal legislature may be discussed under the following heads:

1. Legislative powers.
2. Suspension and control over the administration; enforcing ministerial responsibility.
3. Finance.

1. Legislative Powers. The Act of 1935 (Section 99) confers on the Federal Legislature the general authority to legislate for the whole of British India or any part thereof or

for any federated state. The provincial legislature may make laws for the province or any part thereof.

All the legislative subjects have been divided into three legislative lists under the Act of 1935—the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List. But no legislative list can be absolutely complete. Subjects not included in any of these lists are named residuary subjects.

The federal legislature has the right to make laws on all matters included in the federal legislative List. The subjects introduced in this list are :

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by provincial governments ; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment ; central intelligence bureau ; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the crown in its relations with Indian States.

2. Naval, military and air force works ; local self-government in cantonment areas (not being cantonment areas of Indian state troops), the regulation of house accommodation, in such areas, and, within British India, the delimitation of such areas.

3. External affairs ; the implementing of treaties and agreements with other countries ; extradition, including the surrender of criminal and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation,

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication ; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a province, subject always to provincial legislation, save in so far as federal law otherwise provides, and as regards property in a federated state held by virtue of any lease or agreement with that state, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution, controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Survey of India; Federal meteorological organisations.

15 Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from India, including in relation thereto the regulation of the move ments in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19 Import and export across customs frontiers as defined by the federal government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods aad passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation. the provision of aerodromes, regulation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by federal law to be dangerously inflammable, so far as regards possession, storage and ttansport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations. including banking, insurance and financial corporations, but not including corporations, owned or controlled by a federated state and carrying on business only within their state or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under federal control is declared by federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a federated state, and the regulation of the conduct of insurance business, except as respects business undertaken by a federated state ; Government insurance, except so far as undertaken by a federated state, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a federated state and carrying on business only within the state.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to an'y area in another Governor's province or Chief Commissioners province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the federal legislature, subject to the provisions of the Act and of any Order-in-Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the federal legislature; and to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents befo e committees of the legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list,

44. Duties of customs, including export duties.

45 Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47, Salt.

48 State lotteries.

49 Nationalisation.

50. Migration within India from or into a Governor's province or a Chief Commissioner's province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital

53. Jurisdiction and powers of all courts, except the Federal Courts, with respect to any of the mattets in this list and to such extent as is expressly authorised by Part IX of this Act, the enlargement of appellate jurisdiction of the Federal Court. and the conferring thereon of supplemental powers.

54 Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57, The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list but not including fees taken in any Court.

In some of these matters which are of provincial concern also the provinces can also make laws The federal legislature may be empowered by the Governor-General in its discretion to make laws on any subject included in the provincial legislative list This can be done when the Governor-General is satisfied that an emergency has arisen to warrant such creation on his part. The federal legislature can legislate for two or more provinces on matters about which the provinces concerned desire the federal legislature to make laws. Such a law made by the

federal legislature can be amended or repealed by the legislatures of the provinces concerned,

The provincial legislative list is given in the chapter dealing with the provincial legislature.

Powers of Concurrent Legislation. The federal legislature has powers of concurrent legislation with the provincial legislatures. All such subjects in which the federal legislature has concurrent powers are included in the Concurrent Legislative List in which are included the following subjects:

PART I.

1. Criminal law including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the mattres specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2 Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that province.

5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce ; infants and minors ; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land ; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contract of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency ; administrators general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matter in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals
23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II

26. Factories.

27. Welfare of labour: conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels. and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34 Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

In all cases of conflict between a law made by a provincial legislature and a law made by the federal legislature the latter will prevail as against the former.

2. Supervision and control over the Administration and enforcing of Ministerial Responsibility. The responsibility of the ministers to the legislature is a matter entirely of constitutional convention. Except in the matters in which the Governor-General is required to act in his individual judgment and discretion he is bound to follow the advice of his ministers. But in the Act of 1935 there is no express provision which makes ministers expressly responsible to the federal legislature for their acts or omissions. In other words ministers are the nominees of the Governor-General

depending upon him for they hold office during his pleasure. The only contact of the ministers with the federal legislature is when the legislature determines their salaries. They are appointed, summoned by the Governor-General, their work is assigned to them by the Governor-General. Even the relations of the ministers with their departments, subordinates and himself are regulated by the Governor-General.

It is yet to be seen whether in India the constitutional convention of ministerial responsibility will develop or not. If it does it will enable the Governor-General to see who has, and who has not the majority support in the federal legislature; it will also enable the federal legislature to take a more direct initiative in the selection of the ministers. According to the letter of the 1935 Act the Governor-General in the exercise of his ditscretion is the only authority for the selection, summoning and dismissing of the federal ministers. There is no provision in the Act which obliges the Governor-General to dismiss those ministers who have lost the confidence of the federal legislature. The Act does not even mention the principle of collective responsibility with regard to the Council of Ministers. It depends on an article in the Instrument of Instructions issued to the Governor-General on his appointment. As the Act of 1935 stands, the principle of collective responsibility has no place in it. On the other hand it might be shown that the Act of 1935 does not contemplate collective responsibility ; or ' at least does not insist upon its being observed.' In fact it [Section (4)] " forbids any court, and presumably, therefore also the legislature, by implication or analogy,—to enquire into the question what advice was tendered to the Governor-General by any given minister."

The one means by which a legislature can enforce responsibility is by means of its power to vote the salarics of the ministers. But as has been noted the salaries of the ministers are not votable. It is easy to understand that the salaries of the Counsellors, the Advocate General. the Chiet Commissioners, and the Financial Adviser be made non-votable. But it is difficult to find any justification whatsoever to make the salaries of the ministers non-votable and thus deprive the legislature of its power to control ministers. If a vote of no confidence passed by the federal legislature in the existing ministry is ineffective, it has no means to show its displeasure and punish the ministers. It cannot vary their salaries to their prejudice.

In conclusion it will not he wrong to say that the control of the federal legislature over administration and ministers falls short of what it is in the dominions and what it should be in this country.

Financial Powers. The financial powers of the federal legislature have been discussed under the budget.

4. Residuary Powers. These powers of the federal legislature deal only with the making of laws. In each case the permission of the Governor-General is required to legislate on any of the residuary subjects. The residuary powers of the federal legislature are embodied in Section 104 of the 1935 Act which lays down : "The Governor-General may by public notification empower either the federal legislature or a provincial legislature to enact a law with respect to any matter not enumerated in any of the lists in the seventh schedule to this Act including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

The Governor-General discharges his functions under this section in the exercise of his discretion.

5. **Other Powers of the Federal Legislature.** In addition to the above powers the federal legislature will have the following customary powers :

(*a*) power of interpellation,
(*b*) power of passing resolutions, and
(*c*) power of moving motions of adjournment.

The act does not prohibit the representatives of the rulers from voting on questions relating to British India. Conventions have yet to be established in such matters.

Limitations on the Powers of the Federal Legislature. The Indian Legislature is not a sovereign law-making body like the British Parliament. It has numerous, perhaps too numerous, limitations on its powers.

1. It does not possess any constituent powers. These powers belong to the British Parliament.
2. The British Parliament can still legislate for the whole of India or for any part thereof.
3. Certain matters have been excluded from its province.
4. Bills dealing with certain subjects are reserved for the signification of His Majesty's pleasure.
5. Governor-General's previous sanction is required for the introduction of bills dealing with the following matters :

(*a*) A bill which repeals, amends or is repugnant to any provisions of any act of the British Parliament applying to British India ;

(*b*) repeals, amends or is repugnant to any Governor's or Governor-General's Act or any ordinance promulgated by either of them in their discretion, or

(*c*) affecting matters in which the Governor-General has to exercise his discretion, or

(*d*) repealing, amending or affecting any act relating to any police force ; or

(*e*) affecting the procedure for criminal proceedings in relation to European British subjects.

Besides the above the following must receive the previous sanction of the Governor General :

1. Finance bills.
2. Bills relating to subjects included in the Concurrent Legislative List which involve the issuing of directions to the governments of the provinces ;
3. Bills concerning taxation in which the provinces are interested.

The following must be reserved for the signification of the king's pleasure.

1. Any Bill the provisions of which are in conflict with the provisions of an Act of Parliament extending to British India.
2. Any bill derogating from the powers of any provincial High Court.
3. Any bill altering the character of the Permanent Settlement.
4. Any bill proposing discriminatory legislation against British companies.

In conclusion it may be said that the federal legislature as proposed to be set up under the Act of 1935 will be an impotent and powerless body dominated by the Governor-General in every aspect of its activity Defence and External Affairs will be beyond its control. Previous sanction will be required in a number of matters to be introduced. The railways and the banking system will be independent of its control and supervision. It will have no right to do or say anything with regard to the 80 per cent of the annual expenditure and no measure passed by it can become law without the assent of the Governor-General who is under no obligation to give his assent to all measures passed by it. It is not too much to say that never a federal constitution set up a legislature so shabby, so shackled and so impotent as is set up in India by the Act of 1935.

QUESTIONS AND TOPICS.

1. Critically discuss the composition of the Council of State.
2. What are your objections to the indirect system of election to the Federal Assembly ?
3. Describe the powers and functions of the federal legislature.

4. Discuss the relation of the Governor-General with the federal legislature.

5. Discuss the relation of the ministers with the federal legislature.

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Chapter 42.

THE FEDERAL COURT.

Introductory. In a federation judiciary occupies a very important place. It should be independent both of the national legislature and executive as well as of the governments of the units if it is to be an interpreter and a guardian of the constitution. A judiciary in a federal constitution has three important functions to perform :

1. Interpretation of the constitution.
2. Settlement of disputes between the units and between the national government and the units. and
3. Protection of the rights and privileges of the people.

Before the passing of the Government of India Act, 1935 there was no central court in India. The highest judicial tribunals in the country were provincial high courts from which appeals in certain cases aould be taken to the Privy Council.

At the round table Conference the demand was made for the establishment of a Supreme Court in India. But this demand was rejected by the British Parliament due to financial reasons and also as because it did not want to abolish the jurisdiction of the Privy Council. But under the provisions of the Act of 1935 a federal court was proposed to be set up in India. The Federal Court came into existence on the 1st of October 1937.

Composition of the Federal Court. The Federal Court of India consists of a Chief Justice of India and not more than six other judges. The minimum number of judges required to sit for any purpose is three. At present it consists of the Chief Justice Sir William Spens and two other judges, Sir Varadhachariar and Sir Muhammad Zafarullah. The number of judges cannot exceed six unless the federal legislature presents an address on this behalf to His Majesty through the Governor-General of India.

The Federal Court sits at Delhi, but it may sit at such other place or places, as the Chief Justice of India may, with the approval of the Governor-General from time to time appoint.

Qualifications of the Judges. A person to be appointed as a judge of the Federal Court must have been :

1. A judge of a provincial high court in British India or of a high court of a federated state at least for five years.

2. A barrister of England or of Northern Ireland.
3. A member of the Faculty of Advocates in Scotland.
   Or
4. A pleader of a high court in British India or in a federated state high court of at least ten years' standing.

In the case of a person to be appointed a chief justice at least fifteen years' standing and not ten years' is required. Civilian judges are excluded from the office of the chief justice.

Salaries, Allowances and Pensions. The Chief Justice receives Rs. 7,000 per month while other judges receive Rs. 5,500 p. m., each. The salaries, allowances and other emoluments of the judges of the Federal Court are charged on the revenues of the federation and can not be varied to their disadvantage after their appointment. The Governor-General is empowered under the provisions of the Act to appoint one of the other judges as a temporary chief justice in case of a vacancy.

Tenure The judges of the Federal Court are appointed by His Majesty. They hold office during good behaviour and retire at the age of 65. They may resign earlier or may be removed by His Majesty on the ground of misbehaviour, or of infirmity of mind and body on the report of the Judicial Committee to that effect.

Jurisdiction and Functions of the Federal Court. The Federal Court has original as well as appellate jurisdiction. It performs an advisory function also.

Original Jurisdiction. The federal court possesses original jurisdiction regarding disputes between the members of the Federation of India, that is the federation, any province, or any of the federated states, involving a constitutional question or 'any question of law or fact on which the existence or extent of a legal right depends'. In such cases the judgment of the Federal Court is only *declaratory*—interpreting the constitution and merely stating the existence and extent of a legal right.

It needs to be pointed out that the original jurisdiction of the Federal Court is not limited only to constitutional issues between the disputing parties, it may involve any legal right also. Neither it is identical with 'a mere interpretation of the Constitution Authoritatively'. The Supreme Court in the United States of America and the Privy Council in England both interpret the constitutional law authoritatively for America and for any British Dominion or colony respectively. But the Federal Court of India can not be said to possess that power. Because the Federal Court can give only a declaratory judgment in its original jurisdiction; 'it can declare the existence or extent of a legal right without making that right necessarily a constitutional right'.

Again there is a distinction made between the original jurisdiction of the Federal Court as it extends to the British

Indian Provinces and to the Federated States. For example the jurisdiction of the Federal Court would not extend to the States in respect of the following cases :

1. Any interpretation of a question of law or fact on which a legal right depends, even though the question may arise as between the Federation and the State, or any one of the Provinces.
2. Any dispute which is specifically excluded by agreement from the jurisdiction of the Federal Court even if it may involve questions regarding the interpretation of the constitution.

The explanation of this distinction in the jurisdiction of the Federal is to be found in the different conditions—political, constitutional, economic, social and diplomatic—and status attending the inclusion in or accession to the Federation of the two types of units—autocratic states and democratic provinces.

The Court as Interpreter of the Constitution. The Federal Court has an original jurisdiction for the interpretation of the constitution. This jurisdiction does not arise directly. It arises only when and if a dispute occurs between the federal government and one of the units of the federation or between the units themselves. The Act does not provide for the interpretation on a simple reference from either the Federal Government, State or a provincial government. It must also be pointed out that the Provincial High Courts also appear to be the 'primary interpreter of the constitution'. Under the present jurisdiction (Section 223) the Chartered and other High Courts have a right to discuss constitutional issues if specific cases come before them ; this jurisdiction is continued. Again according to Section 205 of the Government of India Act 1935, which defines the Appellate Jurisdiction of the federal court appeals may be had to that court "from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order-in-Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved, and of its own motion to give or to withhold a certificate accordingly."

Where such a certificate is given by the High Court originally trying the case, leave is allowed in all cases. The ground for appeal may be that the question of law involved in the case was decided wrongly. Further parties to the case can appeal to the Federal Court on any ground on which they had a right to appeal before the Government of India Act 1935 was passed, to the Privy Council without special leave. There is no direct appeal to the Privy Council with or without special leave; but appeals may be made to the Federal Court, if that Court gives permission, on any other ground. All the means that the establishment of the Federal Court does not reduce one of the evil features of litigation—too many appeals—in India. In fact it may not be wrong to say that the establishment of the Court

makes that feature more pronounced than before and widens the vicious circle of appeals and counter appeals.

Appellate Jurisdiction. The Federal Court has the right to entertain appeals from any judgment or decree of a high court in British India, if the high court in question certifies that the case involves a substantial question of law relating to the interpretation of the Government of India Act or any Order-in-Council made under it. In all such cases no direct appeal lies to the Privy Council. The Federal Court is empowered to hear appeals from the decision of a high court in a federated state within the limits specified in the Instrument of Accession. In such a case appeal can be made by way of a special case referred for the opinion of the Federal Court. The communication between the Federal Court and a state high court is to be through the ruler of the state.

Further the Federal Court can hear appeals in Civil cases from any Provincial High Court in cases which involve, both in original and on appeal,

1. A minimum sum of Rs. 50,000, or such other sum not less than Rs. 15,000, as may be prescribed by an Act of the Federal Legislature conferring such jurisdiction on the Federal Court in civil cases ;
2. property of the same value ;
3. any other case allowed by the Federal Court by special leave.

It may be pointed out that none of these provisions are applicable in the case of State High Courts in regard to Civil Suits in the matter of appeals to the Federal Court. The manner in which the Federal Court exercises its appellate jurisdiction in relation to the State High Courts is prescribed under Section 207 of the Act and has been dealt with in the lines above.

Advisory Function. The Federal Court has also an advisory function to perform. The Governor-General, under the provisions of the Act, may refer any question of law to the Federal Court for its opinion and report. The Governor-General in doing so acts in his discretion. The opinion expressed by the Federal Court is not binding.

Appeals to the Privy Council. The Federal Court is not the Supreme Court of India. Appeals still lie to the Privy Council. In the following matters appeals may be taken to the Privy Council without leave of the Federal Court—

(1) in respect of a dispute concerning the interpretation of this Act or Order-in-Council ;

(2) in respect of the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any state ;

(3) in respect of an agreement made in relation to the administration in any state of a law of the federal legislature.

In any other case appeal lies to the Privy Council by leave of the Federal Court.

The appellate jurisdiction of the Federal Court can be enlarged by an Act of the Federal Legislature introduced with the previous sanction of the Governor-General. Thus one may say that the Federal Legislature is empowered to make the Federal Court a final court of appeal from high courts in British India in ordinary non-constitutional matters. It can also empower it to hear appeals in civil cases from high courts in British India without any certificate when certain requirements are satisfied. But it must be pointed out that unless the jurisdiction of the Privy Council which is a 'prerogative court' is abolished the Federal Court can become a supreme court.

Enforcement of the Decrees and Orders of the Court. All authorities, civil and judicial, act in aid of the Federal Court. It has the power to make orders for attendance of witnesses, discovery and production of documents.

Conclusion. Though the jurisdiction both original and appellate of the Federal Court of India is very extensive, the Court cannot be compared to an independent and the final interpreter of the constitution as the United States Supreme Court. The Indian Federal Court is neither the final interpreter of the Indian Constitution, nor is it the ultimate declarer of civil law in the country. Both of these functions and powers are safely vested in and made secure in the Privy Council in England by Section 208 of the 1935 Act. For example an appeal can be made to the Privy Council *without leave* of the Federal Court in all cases in which that Court has given judgment in the exercise of its original jurisdiction in the interpretation of the Constitution, the Instrument of Accession of any Federated State under this Act, (1935 Act) or the interpretation of an agreement under Section 125 with a Federated State.' In all other cases appeal can be made to the Privy Council with the leave of either the Privy Council or of the Federal Court.

Thus the Federal Court of India is not a supreme court. It is more a Court of Record than a supreme court. It is only a high court. It is enormously expensive. There is no popular control over it. If the power of appointment was vested in the crown at least the power of removal of the judges might well have been vested in the people of India. As is the case in England the judges should have been made removable on an address by the Indian legislature presented to His Majesty. It has not had yet much work to do. It has decided certain cases. It has great opportunities to establish its respect and confidence in the eyes of the people of India if it is able to maintain the high standards of justice and impartiality which it has followed since its brief existence.

QUESTIONS AND TOPICS

1. Discuss the composition and powers of the Federal Court.

CHAPTER 43.

THE FEDERAL RAILWAY AUTHORITY.

The Government of India Act, 1935 creates a new statutory body, the Railway Authority, for the administration of state railways and those worked by the companies. The reasons given for its creation are firstly, to take away the railways out of the management of politicians and, secondly, to avoid needless waste and ensure economy. But these arguments are not very sound. Until now the railways have been under the management of the Central Assembly and no political interference or undue influence has been exercised by it in the administration of railways. Nor is there any evidence for a waste or uneconomic management. On the other hand the Assembly has been urging economy and retrenchment in the administration of railways, The real reason for its creation seems to be to protect and guarantee the foreign bond holders of the Indian railways, and to restore their confidence. The other reason is to protect the specific class character and numerical percentage and the posts held by the Anglo-Indians, and the remunerations attached to those posts.

Composition. The Federal Railway Authority will consist of seven members, out of whom not less than three are to be nominated by the Governor-General in his discretion. The rest are to be appointed by the Governor-General on the advice of the federal ministry. One of these seven members will be appointed as the president of the Authority by the Governor-General in his discretion.

Term. Of the original members of the Authority three are to be appointed for three years, subject to being re-eligible for appointment. Other members will hold office for five years and will be eligible for reappointment for a further period of not more than five years. The Governor-General, acting in his individual judgment, may terminate the appointment of any member on the ground that the member is unable or unfit for the performance of the duties of his office. To fill the temporary vacancies, the Governor-General exercising his individual judgment will make rules for appointing acting members.

Qualifications, salaries and allowances. The members of the Railway Authority are entitled to receive such salaries and allowances as the Governor-General, exercising his individual judgment may determine. But these emoluments cannot be reduced during the term of office.

Qualifications. A person to be appointed to the Railway Authority must have experience in commerce, industry, and agriculture, finance or administration, If he is, or within the last preceding twelve months has been, a member of the

federal or any provincial legislature or holding an office under the crown, or a railway officer, he is not qualified for being so appointed. However, a person holding or interested in a contract under the Railway Authority can be appointed and continue as a member of the authority except that he is required to make full disclosure of the facts to the Aurhority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract But this seems to be a "perverted logic, and at best obviously profiteering ethics characteristic of individualist society."[1]

Transaction of business. All acts of the Authority and all questions before them shall be decided by a majority of the members present and voting at a meeting of the Authority. In case of a tie, the president has a second or casting vote. Subject to these provisions of the Act, the Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order. The proceedings of the Authority shall not be invalidated by any vacancy among members or by any defect in the appointment or qualifications of any member. The Governor-General may depute a person or persons to represent him at any meeting of the Authority. Such a person may attend and speak but not vote. The term, qualifications and salaries and allowances of the members and the transaction of business in the Authority are regulated by the Eighth Schedule. The provisions of this Schedule can be amended by the Federal Legislature. But the previous sanction of the Governor-General for the introduction of such a bill or amendment in the Federal Legislature is necessary.

Scope of Railway Authority. he executive authority of the federation, in respect of the regulation, construction, maintenance and operation of railways is invested in the Federal Railway Authority Its authority extends to all Federal railways and to all undertakings carried on as ancillary to the railways. The Authority is also invested with power of making subsidiary arrangements with other persons for carrying on such undertakings by those persons. This may include feeder motor services, hotels and restaurants. providing refreshments, workshops, iron foundaries, rubber plantations, forests and any other material which may be necessary for the construction, maintenance, or operation of the railways.[2]

The Authority is subject to any provisions of any federal, provincial or existing Indian law, and to the relevant provisions of the law of any federated state only so far as they are relevant to the working of the Authority.

The federal government is given the powers of performing certain functions in regard to the construction, equipment

1. K. T. Shah. "Federal Structure" (1937).
2. K. T. Shah, Federal Structure" (1937), p. 490.

and operation of the railways so as to secure the safety both of public and railway employees. This may include the instituting of inquiries in the causes of accidents etc. The federal government may require these enquiries to be held by persons independent of the authority and of any railway administration.

The Federal Railway Authority is a body corporate entitled to sue and be sued in its corporate capacity.

Executive of the Authority. The executive of the Railway Authority shall be a Chief Railway Commissioner, who must be a person with experience in railway administration. He is to be oppointed by the Governor-General exercising his individual judgment, after consultation with the Authority. He is not removable from the office except by the authority and with the approval of the Governor-General, exercising his individual judgment.

The Chief Railway Commissioner is to be helped by a Financial Commissioner, who is also appointed by the Gavernor-General. The schedule does not make clear whether, while making such appointment, the Governor-General would be exercising his individual judgment or acting is hie discretion or would consult the ministers. It is presumed that he will make this appointment on the advice of the ministry. The Financial Commissioner can be removed only by the Governor-General exercising his individual judgment. The authority may oppoint to help the Chief Commissioner such additional commissioners, being persons with experience in railway administration, as the Chief Commissioner may recommend.

The Chief Commissioner and the Financial Commissioner have a right to attend the meetings of the Authority : and the Financial Commissioner may demand that any matter which relates to, or affects, finance should be referred to the Authority.

The Authority is exempted from the payment of any Indian income-tax or supertax on any of its income, profits or gains. All the moneys of the Authority shall be deposited with the Reserve Bank of India. The Authority will employ that Bank as their agents for all transactions in India relating to remittances, exchange and banking. The Bank shall undertake the custody of such moneys and such agency transactions on the same conditions and terms on which they undertake the corresponding work on behalf of the federal government.

Principles to be observed by the Authority. The Federal Railway Authority is required to act on ' business principles ' in the discharging of their functions assigned to them under the Act. However, the meaning of ' business principles ' is left vague. Neither the Act not the Schedule defines it. What the Act requires is that the authority will pay due regard to the interests of agriculture, industry, commerce and the

general public. Further, the Authority is required in particular to make proper provision for meeting out their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of the Act. The federal government is entitled to give such instructions, as it may deem necessary on questions of policy and the authority is bound to observe these instructions. However, the actual administrative and routine work is to be carried on exclusively by the Authority itself. In case of disputes between the federal government and the Federal Roilway Authority as to whether certain question is or is not a question of policy, the decision of the Governor-General in his discretion shall be final.

All the powers given to the Governor-General to be exercised in his discretion and individual judgment and those relating to his special responsibilities shall also apply as regards matters entrusted to the Authority. In other words, "for all supervision, control or direction that the supreme Federal Authority is to exercise over the railways of India, the position is as if the executive authority of the Federal government were vested in the Governor-General and as if the functions of the Railway Authority were the functions of the ministers. The Governor-General may issue such directions to the Authority as he may deem necessary. In matters which appear to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, the authority is bound to observe such directions as the Governor-General may issue to them. The chief executive officer of the Authority, *i. e.*, the Chief Railway Commissioner, is required to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which are likely to involve any special responsibility of the Governor-General.

The Authority and the Federal Government. The transaction of business between the Federal Government and the Railway Authority is to be guided and conducted by the rules made bv the Governor-General, after consultation with the Authority, exercising his individual judgment. The rules shall include provision requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted.

The Federal Government is entitled to make rules as regards the acquisition and sale of land. contracts and working agreements. Except in cases specified in these regulations, the Authority shall not acqrre or dispose of any land. When land is to be compulsosly acquired for the purposes of the functioning of railway it is the Federal Government, and not the Authority itself, that will acquire land on their

1. K.T. Shah, "Federal Structure", p. 495

behalf and at their expense. Contracts, on the other hand, made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the federation, except in the case of a contract supplementing one made before the establishment of the Authority. The same rule applies to the making of working agreement with a state or any other corporation operating a railway in India.

Finance of the Railway Authority. The Authority shall establish, maintain and control a fund, known as the Railway Fund. All moneys received by the Authority, whether on revenue account or on capital account, shall be credited to this fund. All moneys received by the Authority from the Federal Government should also be credited to this fund. All expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of this fund. The Authority can establish and maintain separate provident funds for the benefit of persons who are or have been employed in connection with railways. Further, sub-section 2 of section 186 of the Act reads :

"The receipts of the Authority on revenue account in any financial year shall be applied in—

(*a*) defraying working expenses ;

(*b*) meeting payments due under contracts or agreements to railway undertakings ;

(*c*) paying pensions, and contributions to provident funds ;

(*d*) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act, on those revenues as is attributable to service on railways in India ;

(*e*) making due provisions for maintenance, renewals, improvements and depreciation ;

(*f*) making to the revenues of the Federation any payments by way of interest which they are required by this part of this Act to make ; and

(*g*) defraying other expenses properly chargeable against revenue in that year.

After meeting these expenses (as mentioned above), the surplus will be apportioned from time to time between the Federation and the Authority under a scheme prepared, and from time to time reviewed, by the Federal Government. Until such rules are made by the Federal Government, they will be apportioned under the rules which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts. The share of the Federal Government will be transferred to it accordingly and will make a part of its revenues.

The accounts and the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India. A report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General shall be published by the Authority.

Railway Rates Committee. A Railway Rates Committee may be appointed by the Governor-General from time to time. Its function is to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee. Maximum and minimum rates and fares, however, are to be fixed by the Authority subject to control by the Federal Government, or by the federal legislature.[1]

The Railway Tribunal. The Act makes provision for a tribunal known as the "Railway Tribunal." It is to consist of a president and two other members. The president will be one of the judges of the Federal Court. He will be selected and appointed by the Governor-General in his discretion after consultation with the Chief Justice. He shall hold office for a period of not less than five years. He is eligible for re-appointment for a further period of five years or less. In case of temporary inability of the president to perform his duties, the governor-general may appoint another judge for the time being after consultation with the Chief Justice. But when the president ceases to be the judge ot the Federal Court he ceases to be the president of the tribunal as well. The other two members shall be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway administration or business experience.

The jurisdiction of the tribunal extends to cases arising between the Federal Railway Authority and the administration of railways owned and worked by a Federated State only. The cases arising between the Authority and the railways worked by companies cannot be referred to it. Both the Railway Authority and the Federated State owning and working a railway may appeal to the tribunal for adequate protection against unfair or uneconomic competition. In case of disputes arising out of any proposal for constructing a railway or for altering the alignment or gauge of a railway, the procedure is a little different. The Governor-General will make rules for such cases acting in his discretion. In case a party lodges an appeal with the Governor-General on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a federal railway or a state railway, as the case may be, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification

1. S. M. Bose, The Working Constitution in India, (1939), p. 336.

or with such modification as the Tribunal may approve. The proposal shall not be proceeded with except on the approval of the Tribunal. However, the Governor-General may in his discretion certify that for reasons connected with defence effect should, or should not, be given to a proposal. An appeal shall lie in the Federal Court against the decisions of the Railway Tribunal on a question of law. But no appeal shall lie from the decision of the Federal Court on any such appeal. But the Tribunal or the Federal Court may, on an appeal made to it, evoke any previous order made by it.

The President of the Tribunal, with the approval of the Governor-General in his discretion, is entitled to make rules regulating the practice and the procedure of the Tribunal, and the fees to be taken in proceedings before it.

The salary of the members of the Tribunal, other than the president, and the administrative expenses of the Tribunal shall be determined by the Governor-General in his discretion. These will be charged on the revenues of the Federation. Any fees or other moneys received or taken by the Tribunal will make part of the revenues of the Federation. Disputes arising between the Authority and a railway owned and worked by a company will be deemed to have arisen between the company and the Secretary of State for India, and will be determined in accordance with the terms of the contract. Any settlement of such disputes or any award made in arbitration to which such disputes have been referred will be binding on the Federal Government and the Authority.[1] Any costs and expenses incurred by the Secretary of State in connection with the matter shall be paid out of the revenues of the Federation and shall be charged on Federal revenues but shall be a debt due to the Federation from the Authority.

Conclusion. The setting up and working of the Railway Authority is a new experiment and its success or failure can not be determined unless it actually works. However, it is a "creation of distrust of the democratic principle in government, or of the Indian politician come into power, its object as well as nature must meet with the strongest criticism".[2] The management of railways has been removed far away from the hands of the popular ministry. The Minister of Railways will have no hand in their management except that of giving directions on general policy. But the authority of the Governor-General will be so pervading and impressive that the minister will have little scope. Secondly, no provision is made for economy and retrenchment in the administration of railways by means of this new creation. There is no incentive to economy in the Railway Authority. The budget of the Authority shall not be laid before and voted by the federal legislature but merely audited by the Auditor-General.

The creation of the Authority seems to create an impression that it is meant to safeguard the interests of the foreign bond-

1. S. M. Bose. The Working Constitution in India, p. 341.
2. K. T. Shah. Federal Structure, (1937), p. 500.

holders and the vested rights of Europeans and Anglo-Indians, to give favoured treatment in respect of railway services and other rights regarding railway traffic.

QUESTIONS AND TOPICS

1. Critically discuss the control of the Federal Government over the Federal Railway Authority.
2. Describe the composition, powers and functions of the Federal Railway Authority.

SELECT REFERENCES

1. S. M. Bose: *The Working Constitution of India*, (1939) pp. 327—342.
2. K. T. Shah: *Federal Structure*, pp. 488 –501.

CHAPTER 44.

RESERVE BANK

A Reserve Bank for British India has been constituted under the Reserve Bank of India Act, 1934. The Bank began to operate in 1935. The reasons for its creation were :

Firstly, the maintenance of financial stability,

Secondly, to ensure the stability of currency and credit, and

Thirdly, the maintenance of Reserves with an independent body far removed from the control and influence of the Indian day-to-day politics.

The function of the bank is to regulate the issue of bank-notes and the keeping of reserves with a view to securing the financial stability and to operate the currency and credit system of the country to its advantage. The Bank started with a capital of five crores of rupees divided into shares of Rs. 100 each.

The management, direction and superintendence of the affairs of the Bank are vested in a Central Board of Directors. It consists of one governor, two deputy governors, four directors, and eight other directors, and one government official. The Governors and the Deputy Governors are appointed by the Governor-General, acting in his discretion. The fixing of their salaries and allowances and their term is done in his discretion. In case of a temporary vacancy, the officiating governor or deputy-governors will also be appointed by the Governor-General in his discretion. The directors shall be appointed by the Governor-General exercising his individual judgment and similarly, their removal from office will be effected by the Governor-General exercising his individual judgment. The eight directors are elected by the shareholders. The government official is nominated by the Governor-General. In case of the suppression of the Central Board of the Reserve Bank and any action consequent thereon and in the case of liquidation of the Bank, the Governor-General is empowered to take action in his discretion.

For the introduction of a bill or a an amendment affecting the coinage or currency of the federation or the constitution and the functions of the Reserve Bank in either of the Chambers of the Federal Legislature, previous sanction of the Governor-General in his discretion is essential.

Thus the Reserve Bank is far removed from the control of the Federal Ministry; it will have no control in the affairs of the Reserve Bank. It is the Governor-General who has been given the controlling power. The reason is that the Reserve Bank is supposed to be best managed if its staff is kept outside political influence and party politics. It practice, however, political influence and party manoeuvring are supposed to be dangerous in these departments only where they are alleged to

be exercised by parties not sympathetic to the British steel frame in India.[1] Otherwise, the appointment of the late Prime Minister of the Punjab as the deputy-governor of the Reserve Bank and his consequent withdrawal from that office is inexplicable on any other grounds.

QUESTIONS AND TOPICS.

1. Describe the composition and functions of the Reserve Bank of India.

SELECT REFERENCES.

1. Bose, S. M.: *The Working Constitution in India*, pp. 297—299, (1939).
2. Shah, K. T.: *Federal Structure*, pp. 275–276, (1937).

1. K. T. Shah. Op. cit., page 276.

Chapter 45.

THE HOME GOVERNMENT OF INDIA.

Introductory. Under the Act of 1935 also, the theory of the British parliament as trustee and guardian of the Indian people is maintained. The vehicle and medium for the exercise of the sovereignty of the British Parliament is the Secretary of State for India.

With the introduction of provincial autonomy in the provinces and a measure of responsibility in the centre under the Act of 1935 a measure of control and authority of the Secretary of State which he exercised under the Act of 1919 disappears. The Act of 1935 has abolished the India Council since 1st April 1937 and has substituted in its place Advisers to the Secretary of State.

Powers of the Secretary of State under the Act of 1935. The powers and functions of the Secretary of State are scattered throughout the Act. Many of them are indirect and implied and are clothed in legal jargon like 'His Majesty-in-Council' or 'Orders-in-Council'.

The Secretary of State for India has the following powers;

1. He possesses powers of supervision, direction and control over the Governor-General of India, and through him over the provincial Governors in all matters in which these officers are required to act in their discretion and individual judgment.

   It needs hardly be pointed out that the field in which the Governor-General and the Governors of the provinces act in their discretion, individual judgment and special responsibilities is very extensive and thus the Secretary of State will have the powers of superintendence, direction and control over a large sphere of the activity of the central government as well as over that of the provincial governments.
2. The secretary of state has ultimate powers of recruitment and protection of the rights and interests and privileges of the most important and influential services, *e. g.*, the Indian Civil Service and the Indian Police Service.
3. He has the power of supervision and control over the federal financial policy. This power gives him much influence over the Federal Railway Authority and the Reserve Bank of India.
4. The power of appointing the Accountant General is vested in him.
5. He has been vested with special powers which he exercises on behalf of His Majesty in Council.
   (*a*) He can issue Orders-in-Council.

(*b*) He advises His Majesty with regard to giving assent to, or withholding assent, or disallowing acts passed by federal and provincial legislatures.

(*c*) He exercises control with regard to putting in force of emergency powers, enacting of the Governor-General and Governor's Acts etc.

6. He acts as an agent of the federal government in England in matters of borrowing money on behalf of the federal government in England. He also performs certain functions in the same capacity in respect of payment of pensions in England and with regard to certain liabilities and contracts.

7. He exercises the powers of the Crown in relation to Indian States which do not come within the provisions of the Authority of the Federal Government.

8. He is the final authority in regard to inter-provincial disputes in regard to water supplies and inter-provincial trade conventions.

9. In the case of all legislation passed either by the Federal Legislature or the Provincial Legislature, power is reserved to the Crown to disallow Acts of these legislatures. If this power is over exercised, it will be exercised by the Secretary of State for India because he would be the ordinary constitutional adviser of the British Crown in such matters. It may also be made clear that in view of the stringent provisions with regard to commercial and or financial discrimination against British interests; and also in view of the serious need and demand of Indians for intensive industrial and commercial development, this power of the British Crown is not merely a theoretical power, but one with far reaching influence and capable of doing a good deal of harm to the industrial and commercial development of India.

10. The Secretary of State for India is the supreme Authority with regard to all areas which are excluded from the operation of constitution Government set up by the Government of India Act 1935. Under Section 91 of the Act, the Secretary of State is the authority to prepare the draft of an Order-in-Council, declaring certain areas in India—wholly or partially—as excluded from the benefits (?) of constitutional government. No doubt this draft is submitted to the Parliament, but the Parliament has neither the knowledge nor the time to examine the draft critically and make any change for the better. Even if Parliament had knowledge or time it is not certain that it would make any change for the better. It is a body dominated by reactionary elements incapable of any just or progressive outlook where India is concerned.

Moreover the majority of its members know next to nothing about Indian conditions, aspirations and requirements, they have one supreme excuse and qualification to cover their action or inaction in Indian politics and that is their colossal ignorance and lack of understanding of politics in India, but this they never admit. So it is really the Secretary of State who 'rules these areas through the Governor, or the Governor-General, acting in his discretion.'

Thus it is obvious from a general review of the various, varied and substantial powers of the Secretary of State for India that he still possesses very real and extensive powers of superintendence, direction and control. He, undoubtedly and unmistakably still stands out as 'the most dominant authority in the Indian Constitution.' He exercises his powers which are at once real and effective over the federal government as well as over the governments of the provinces. Though it must be made clear that he has no powers of interference directly or indirectly in these matters which are administered by Indian ministers. But the Secretary of State has the power to interfere with federal ministers administering the transferred departments. It is true that his powers do not seem to be so imposing as those of the Governor-General or a Governor of a Province; but there is no mistake about it that both the Governor General and Provincial Governors are at once his subordinates and creatures. They are 'obedient to every nod from the Jupiter of Whitehall, amenable to every hint from this juggler of Charles Street.' His is a Pandoras' Box in which are included matters of fundamental policy, matters of routine administration, protection of British vested interests as well as of British domination-economic and political—over India, the 'doings' of the Indian Legislature, payment of pensions to members of certain services and many other matters which defy description. And may it be pointed out that no good comes out of Pandoras' Box; it is a curse and not a blessing.

Thus it is obvious that the Secretary of State for India still has vast powers of superintendence, direction and control over the federal government as well as over the governments of the provinces. In the provinces the Secretary of State has no powers interference directly or indirectly in matters administered by Indian ministers. But the Secretary of State has the power to interfere with federal ministers administering the transferred departments.

Advisers. The Council of India has been abolished since April 1, 1937 and Advisers are substituted in its place. The number of advisers must not be less than three and more than six. They are appointed by the Secretary of State. One half of the number of advisers must have served in India for at least ten years and must be appointed within two years of their ceasing work. They are appointed for five years and are not re-eligible for the same office. They cannot be members of the British parliament. They are paid £1350 a year and in addition to this

salary an overseas allowance of £600 a year is paid to those who were domiciled in India when they were appointed.

The manner of the appointment of the Advisers ensures the preponderance of the service element and influence in the body of the Advisers of the Secretary of State. Though their number is less than the membership of the old India Council it does not mean that their character is also different. Every Indian school boy knows that the service element is stupidly and notoriously antagonistic and unsympathetic to the political aspirations of India; and though the field of their activity is reduced by the provisions of the Government of India Act 1935, the all pervading and dominating powers of the Secretary of State with regard to the protection of the privileges of all superior services is assured by providing for the preponderance of service element in his Advisers. The appointment of an Adviser is terminable earlier than five years. It may come to an end by resignation, tendered by the Adviser, in writing to the Secretary of State, or if he is considered to have become mentally and physically unfit for his office. May it be suggested here that Indian opinion considers the service element psychologically unfit for appointment to the body of Advisers of the Secretary of State for India.

Functions. The old India Council had numerous functions to perform. It was intended at once to inform and advise the Secretary of State; in addition to the above it was also to be a check upon him to prevent him from being influenced by considerations of British Party politics. The position of the Advisers of the Secretary of State is not the same, it is worse than before. The Secretary of State is not obliged to make any rules of business which is decided by him alone to be submitted or not to be submitted to them. He is not required to follow any uniform practice in regard to submitting any business to his Advisers. On one occasion he may consult all his advisers on another only one. He may submit a matter to them at one time, at another he may not. Thus the Secretary may consult them collectivety or individually as he pleases or may not consult them at all. He acts on their advice only in specific matters. For example certain service matters, property and contracts.

The existence, powers and functions of the Secretary of State and his advisers need no comment. It is enough to say that sooner the control of the Secretary of State is abolished the better it will be for the relations of India aad England. The position of the advisers needs more pity than condemnation.

India Office. The India Office has been reconstituted since April 1, 1937. All the members of the staff belonging to the permanent establishment of the Secretary of State in Council have been transferred to the permanent civil service. Those who were temporary have also been transferred to the department of the Secretary of State. The current expenses of the India Office are paid out of the civil service estimates of the United Kingdom. But it is a myth. India has to pay an annual grant-in-aid for the purpose. And " in actual practice there will

not be a great difference in the expenditure one way or the other." It is required by the Act that such periodical and other sums which represent the expenses of the Secrerary of State for performing duties on behalf of the federation shall be paid out of the Federal revenues into the British treasury. Thus the new arrangement is as bad or as good as the old one and does not provide any relief to the poor Indian tax-payer.

The High Commissioner for India. The office of the High Commissioner for India was created by an Order-in-Council in August 1920. Since then there has been a High Commissioner for India in England. The Government of India Act, 1935 has not introduced any innovation in the status, powers and functions of this officer. He is appointed by the Governor-General in his individual judgment and his salary, allowances and conditions of service are also determined by that officer in the same manner The High Commissioner is the agent of the Government of India in England. He has a number of duties to perform which include—

1. Duties in connection with the business of the federation, particularly those which relate to the making of contracts.
2. Functions on behalf of a federated state or a province similar to the functions performed by him on behalf of the federation.
3. Duties on behalf of the Governor-General acting in his discretion for the reserved departments and for that field of govenment which is excluded from the sphere of the federal government.

The commercial and agency functions of the Secetary of State for India are also performed by the High Commissioner. He also supervises the Indian stores and the Indian Students Overseas Departments. He exercises supervision over the work of the Trade Commissioner for India in Great Britain. He is paid £3,000 a year in addition to which he also paid entertainment allowance by the Government of India.

The status of the High Commissioner for India is inferior to that of the Dominion High Commissioner. The Dominion High Commissioners act as channels of communication between their governments and the government of Great Britain. The High Conmmissioner for India performs no such functions. He has no initiative and has no better position than that of an agent appointed for certain purposes.

QUESTIONS AND TOPICS.

1. Discuss the powers and functions of the Secretary of State for India under the Act of 1935.
2. Write a short note on the status and functions of the High Commissioner for India.

CHAPTER 46.

THE INDIAN STATES IN THE FEDERATION.

Introductory The Government of India Act, 1935 brings India under a single constitutional system. It creates a new state called the Federation of India which is to consist of the provinces of British India and those Indian states which elect to join the federation. An act of parliament has transformed the provinces of British India autonomous and independent ready to be units of the new federation when it is established. But the case of Indian states is different. So far paliament has never claimed to legislate directly either for the rulers of the states or for the peoples of the states. Therefore the Act of 1935 admits that the states can join the federation only by their own voluntary act expressed through their executing an Instrument of Accession the form of which must be acceptable to the crown.

Territorial and Political Integrity of States maintained by the Act. The territorial and political integrity of the states joining the federation is fully maintained by the act according to which the federal executive authority does not extend in any federated state to matters outside the competence of the federal legislature in respect of that state. Even in such matter the federal executive authority is limited by conditions mentioned in the Instrument of Accession of that state. The federal legislature is forbidden by the act from making laws for a federated state except in accordance with the limitations specified in the Instrument of Accession. The Federal Court can exercise jurisdiction only in certain matters and in a prescribed manner in respect of matters arising in a federated state.

Further the Act of 1935 empowers His Majesty to create new provinces or to increase or diminish the area or change the territoriaI boundaries of provinces. But in respect of a federated state such a power is not given to any authority in the Act. Again the guarantee by the crown for the perpetual maintenance of the states and their rulers by treaties, sanads and engagements is not affected, even in the least, by the Act of 1935. Hence it is no exaggeration to say that the territorial and political integrity of the Indian states is fully maintained by the Government of India Act, 1935.

The States and the Federal Executive. A state which joins the federation becomes subject to the executive, legislative and judicial authority of the federation. The executive authority of the federation will extend to a state only in respect of matters in which the federal legislature can legislate for that state and subject to any limitations mentioned in its Instrument of Accession. The ruler of a federated state is required to exercise the executive authority of the state in such a manner as to secure respect for the federal laws applying in that state. It is also demanded by the act that no hindrances should be

placed by the ruler in his state against the executive authority of the federation. The Governor-General of India is authorised by the act to issue instructions to the ruler if any hindrances were placed, It is not likely that a ruler would disregard instructions issued by the Governor-General, but if he does so the act does not provide for meeting such a situation.

Concession in the States. The Act of 1935 concedes yet another concession to the rulers of federating states in respect of their sovereignty. A ruler may stipulate in his Instrument of Accession that his state may be entrusted to administer any or all federal laws. In such a case the government of the federation will be unable to exercise its executive authority directly in that state. The only executive authority in the state will be the ruler of that state. But so far as the execution of federal laws is concerned the ruler is only an agent of the federal government and performs only agency functions. As such he would be r.sponsible and accountable for the due discharge of his agency functions to the Governor-General and the federal legislature. This creates a very interesting situation. There would be occasions when questions relating to these agency administrations would be raised and discussed on the floor of the federal legislature. And what will happen if in the opinion of the Governor-General the administrative machinery of a state or its financial resources become inadequate for the proper execution of these agency responsibilities? It is possible to meet this situation by making changes in the terms of the Instrument of Accession. But a ruler may not agree to it, then what will be done? The Act of 1935 does not make any provision to meet such a situation. Perhaps it depends on paramountcy to be called in. But the Act makes an ample provision to meet such a situation in case it arises in any of the provinces of British India. While considering this point the fact must not be lost sight of that in majority of the Indian states there is no sound system of administration and maladministration has often resulted in the intervention by the paramount power followed by either the deposition or abdication of the ruler. May it be suggested that the concession of performing these agency functions be granted most sparingly to the rulers and made subject to revocation when the federal government may consider such revocation necessary. Further remedies for constitutional difficulties which arise from the provisions of the act should be found in the provisions of the act itself and not outside the act, *e.g.*, in paramountcy.

The Instrument of Instructions to the Governor-General would direct that officer to include in his ministry, so far as practicable, representatives of the federated states. If a representative of a state which does not accept the direct federal executive authority is appointed a minister, he will be exercising administrative authority in all other units of the federation except the state which he represents, while his colleagues from British India will not be exercising any authority in that state.

The States and the Federal Legislature. The federal legislature is to consist of two chambers—the Council of State

and the Federal Assembly. The Council of State will have a total membership of 260 members; of these the states will have not more than 104 representatives. The Federal Assembly will consist of 375 members; of these 125 must be the representatives of the states. The representatives of the states are nominated by the rulers. The Act of 1935 is gracefully silent regarding the manner in which these representatives are to be selected. The representatives of the states in the federal legislature will not represent the people of the states but their reprective rulers. It has been pointed out elsewhere in these pages that in the matter of representation in the federal legislature the states have been granted unproportionate weightage and have got much more representation than is warranted by their either importance, population or area

Again the powers of the federal legislature are circumscribed so far as the states are concerned They are confined to the limits laid down in the Instrument of Accession of a state. The federal legislature would legislate for British India in a more extensive field than in the case of any federated state, as the Concurrent Legislative List is not applicable to the state. Under the Act any law or a provision of a law of a federated state is void if it is repugnant to a federal law.

The States and the Federal Judiciary. The Act of 1935 requires all courts in the federation to act in aid of the Federal Court. It is also laid down that communications from the Federal Court to the ruler of a state should be in the form of letters of request. The Federal Court can not hold any communication directly with the high court or a federated state. The federal court can hear appeals from the high court in a federated state within the limits prescribed in the Instrument of Accession.

Conclusion. This, in brief, is the position of the Indian states under the Act of 1935. We have noticed the manner in which the executive, legislative and judicial authority of federation is to be exercised in the federated states. The states occupy a place of vantage in the proposed federation of India and the Act of 1935 jealously guard their privileges and interests. They are so placed that they can be used as a dead load by the British government to obstruct the establishment of a really democratic and responsible government in this country.

QUESTIONS AND TOPICS.

1. Discuss the position of the Indian states in the federation.

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CHAPTER 47.

THE PROVINCIAL EXECUTIVE.

Introductory. Under the Act of 1935 the provinces are federating units. The boundaries of the provinces of British India had not been decided by any physical, geographical, linguistic, or ethnological considerations, but had been determined in the process of conquest of British India and under considerations of consolidation of British rule in accordance with administrative experience.

In the Act of 1935 the need for redistribution of provinces has been admitted and two new provinces have been created under the Act. The creation of other provinces is also provided for by Order-in-Council after consultation with the federal executive, the federal legislature and the authorities of any province affected by such creation.

The system of Dyarchy introduced by the Act of 1919 has been abolished by the Act of 1935 and has been replaced by a system called 'Provincial Autonomy'. Under this system the provinces have been given definite powers over matters called provincial subjects. They are assigned definite sources of revenues. All provincial subjects are placed under the control of the provincial executive and legislature. The description of a provincial government under provincial autonomy is the purpose of the following pages.

The Provincial Executive : The Governor. Under the Act of 1935 the executive authority of the province is vested in the governor as a representative of the king. This authority is exercised by the governor, either directly of through his subordinates.

Appointment. The governor is appointed by the king on the advice of the Secretary of State for India for a period of five years. His salary is fixed by the Act Certain allowances payable to him to enable him to discharge his functions with dignity and convenience are fixed by His Majesty in Council. All these sums payable to him as salaries and allowances are charged on the revenues of the province and are immune from the vote of the provincial legislature.

Extent of the Provincial Eexcutive Authority. The provincial executive authority extends to all matters on which the provincial legislature is competent to make laws.

It possesses certain powers in respect of residuary subjects and it may be assigned the administration of excluded areas by the government of the federation.

The provincial government is vested with certain powers of current legislation with the federal government.

The provincial executive is authorised to give effect to certain measures of the federal government which affect the province concerned.

Powers and Functions of the Governor. There are three distinct grades of the kinds of powers exercised by the Governor :

1. Governor acting in his discretion.
2. Governor acting in his individual judgment in respect of his special responsibilities, and
3. Governor acting on the advice of his ministers. The Governor, like the Governor-General, is aided and advised by a council of ministers.

1. **Discretionery Powers and Functions of the Governor.** The more important of these powers are :

1. May preside at the meetings of the cabinet.
2. Decide any question whether any matter is, or is not, one in which the governor is required to act in his discretion, or to exercise his individual judgment.
3. To choose, summon and dismiss his ministers, and to determine their salaries, until the same are determined by an Act of the Provincial Legislature.
4. To make rules that no police officer shall disclose the sources of information regarding persons engaged in terrorist activities.
5. To make rules for the more convenient transaction of the business of the provincial government, and for the distribution of work amongst the ministers except such business as is entrusted to him to be transacted in his discretion.
6. To summon or prorogue the provincial legislature or to dissolve the Provincial Legislative Assembly.
7. To address the legislative assembly or either chamber where there is a bicameral legislature and to require attendance of the members.
8. To address messages to the chamber or chambers of the provincial legislature as the case may be in regard to a bill pending before that body or for any other purpose.
9. (*a*) To make rules, after consultation with the speaker, or the president, for regulating the procedure of and the conduct of business in the legislature ;

   (*b*) to see that the financial business of the provincial legislature is completed in time.

   (*c*) to prohibit discussion or the asking of any questions on any matter connected with an Indian state unless he is satisfied that the matter affects the interests of the provincial government ;

   (*d*) Affecting relations of His Majesty or the Governor-General, and any foreign state or prince, unless the Governor in his discretion consents to such discussion.

10. To carry out the instructions of the Governor-General in relation to defence, external affairs, and ecclesiastical affairs.
11. Power to suspend the constitution except that portion which relates to the high court, and to govern the province by his Acts and Ordinances.

2. **Powers and Functions of the Governor to be exercised in his Individual Judgment.** These relate to the so called special responsibilities of the Governor. In the following matters he is to consult his ministers but is not obliged to follow their advice. The more important of these powers and functions are :

1. The prevention of any grave menace to the peace or tranquillity of the province or of any part of the province.
2. To safeguard the legitimate interests of the minorities.
3. The securing to, and to the dependents of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under this act, and the safeguarding of their leigtimate interests.
4. The securing of the peace and good government of areas which by or under the provisions of this part of the act are declared to be partially excluded areas.
5. The protection of the rights of any Indian state and the rights and dignity of the ruler thereof.

The Governor of the Central Provinces and Berar has a special responsibility with regard to expending a proper share of the provincial revenues for the benefit of Berar.

Similarly the Governor of Sind is required to secure the proper administration of the Lloyd Barrage and Canals Scheme.

In addition to the above the Governor of a province exercises his individual judgment in the matter of appointment and dismissal of the Advocate-General as also in the fixing of his remuneration.

3. **Governor Acting on the Advice of Ministers.** In all other matters the Governor is 'aided and advised' by his ministers. According to the Instrument of Instructions issued to a Governor it is required of him that he is to be generally guided by his ministers. It is the ministers and not the Governor who are responsible to the legislature and therefore it is they who are to exercise real authority.

Powers of the Governor Classified. The powers and functions of the Governor may well be studied under three heads :

1. Executive powers.
2. Legislative powers, and
3. Financial powers.

1. Executive Powers. The executive powers of the Governor, as has been noticed, are of three kinds :

1. Powers to act in his discretion.
2. Powers to act in his individual judgment in respect of his special responsibilities.
3. Powers exercised on the advice of his ministers.

These powers have been described in the preceeding pages.

2. Legislative Powers. The following are the more important of the legislative powers of the Governor :—

1. Summoning or proroguing the provincial legislative assembly or the legislative council and dissolving the legislative assembly when the provincial legislature is composed of two chambers.
2. Requiring the attendance of the members of the legislature and addressing the council or the assembly.
3. Sending messages to the council or assembly in respect of a bill pending before it.
4. Calling the joint session of the two houses.
5. Dispensing with certain disqualifications in regard to election to the provincial legislature.
6. Assenting to, or refusing assent to a bill or reserving a bill for the signification of his Majesty's pleasure or returning it to the legislature for reconsideration.
7. Making rules, after consultation with the speaker or the president (where there are two houses) for regulating the procedure and conduct of business in the houses of the provincial legislature.
8. Prohibiting the discussion of or the asking of questions on matters relating to Indian states. If he is satisfied that the matter affects the provincial government or a British subject resident in the province he may waive this restriction.
9. Prohibiting the discussion of or the asking of questions on matters affecting foreign affairs. conduct of any ruler of a state or of a member of a ruling family.
10. Stopping the progress of a bill in the legislature which in his opinion would affect the discharge of his special responsibility regarding the prevention of any menace to the peace or tranquillity of the province or any part thereof.
11. The following kinds of bills require the previous sanction of the Governor,

(*a*) any bill which amends or is repugnant to any ordinance promulgated by the Governor or Governor's Act made under his discretion, or any act relating tothe police force ;

(*b*) any bill or amendment which prescribes professional or technical qualifications, or imposes any disability, restriction or condition in regard to the practising of any profession or carrying on any occupation, trade or business, or the holding of any office in British India ;

(*c*) any bill or amendment giving additional functions to the Public Service Commission.

(*d*) any bill or amendment which intends to abolish or restrict the protection accorded to certain servants of the crown in India by the existing law of the land.

12. **Law-making powers.**

(1) The Governor can issue ordinances which are of two kinds :

(*a*) Ordinances made during the recess of the provincial legislature. When Ministers advise that a state of emergency exists the Governor is empowered to issue ordinances during the recess of the legislature. The responsibility for such ordinances is on the ministers. Such ordinances expire six weeks after the re-assembling of the legislature, if they are not withdrawn earlier.

(*b*) The second kind of ordinances are promulgated by the Governor in the exercise of his discretion or individual judgment, as the case may be, absolutely on his responsibility. They have the same force as the laws made by the provincial legislature. They remain in force for six months in the first instance, but may be renewed for the same period.

(2) **Governor's Acts.** The Governor is authorised to enact Governor's Acts. The legislature and the ministry bear no responsibility for such Acts. The Governor presents the draft of a bill to the provincial legislature saying in a message that the enactment of the bill into law is essential. A period of one month is given to the legislature for consideration of the bill, it becomes law by the authority of the Governor alone.

3. **Financial Powers of the Governor.** The following are the more important of the financial powers enjoyed by the Governor :

1. To decide whether any expenditure is to be charged or not to be charged on the revenues of the province.

2. To secure the completion in time of the financial business of the provincial government in the legislature.
3. No demand for grant can be introduced in the legislature except on his recommendation.
4. Can restore any grant refused or reduced by the legislature.

Control of the Governor-General over the Governor. The Governor-General has been given under the Act certain powers of general superintendence and control over the Governor. These powers are as follows:

1. In matters in which the Governor acts in his discretion or individual judgment he is under the general control of, and is to comply with such particular directions as the Governor-General may give to him from time to time.
2. The Governor is required to carry out the directions of the Governor-General with regard to Defence, External Affairs or Ecclesiastical affairs.
3. Certain Bills cannot be introduced in the provincial legislature without the previous sanction of the Governor-General.
4. Certain Bills containing provisions repugnant to any federal law are to be reserved by the Governor for consideration by the Governor-General. In such a case the Governor-General may assent or may refuse his assent or may reserve it for the signification of His Majesty's pleasure to such a bill or may return it with recommendation for its amendment to the Governor. A bill so returned must be considered by the provincial legislature.
5. No ordinance may be promulgated by the Governor on his responsibility which is repugnant to a federal law or involves any of the special powers of the Governor-General. If it is promulgated, it will be withdrawn when the Governor-General so directs. Similar is the case with Governor's Acts.
6. The Governor has to exercise certain agency functions for the Governor-General.
7. He is to keep the Governor-General informed regarding matters affecting irrigation.

Instrument of Instructions. The Governor, like the Governor- General, is also issued Instrument of Instructions on his appoin tment. The procedure (discussed in the chapter on Federa l Executive) in both the cases is the same. Though a docum ent of considerable constitutional importance yet no

judicial notice is to be taken of the provisions contained in it. It contains instructions and directions to the Governor of a province as to the manner in which he is to exercise his direction and act in regard to his special responsibilities. It "embodies the conventions or understandings of Responsible Government as regards the relation of the constitutional head with his ministers." The liberal manner in which the Instrument interprets the rigid provisions of the Act of 1935 furnishes a lubrication for the smooth working of the constitutional machinery. The main provisions of the Instrument of Instruction may be summoned up as follows:

1. The Governor is required to do his best to help all classes of people to take their proper place in the public life and government of the province.
2. In the matter of appointing his council of ministers he is to follow the principles followed in the formation of the cabinet. He is to foster a sense of joint responsibility among the ministers.
3. He is to be guided by his ministers in all matters except those in which he is to exercise his discretion or individual judgment or in which he bears special responsibilities.
4. To safeguard the interests of minorities and secure a due proportion of appointment to various communities.
5. To safeguard the legitimate rights and privileges of the public services.
6. Prevention of discriminatory commercial measures.
7. Not to allow any interference with the rights and economic interest of the Indian states.
8. To reserve for the consideration of the Governor-General, any bill which:
   - (*i*) repeals or is repugnant to the provisions of any Act of Parliament applicable to British India;
   - (*ii*) derogates from the power of the High Court as to affect its position adversely.
   - (*iii*) alters the character of Permanent Settlement, and
   - (*iv*) in regard to which he is doubtful whether it does or does not initiate discriminating measures.
9. His nominations to the Council are to be made with a view to redress inequalities of representation resulting from election, notably in regard to representation of women and scheduled casres.

The Council of Ministers. The ministers are chosen by the Governor. Under the provisions of the Act of 1935 he is not

obliged to appoint a representative and responsible ministry, but he is instructed to do so in the Instrument of Instructions. According to these instructions the Governor is to select his ministers in consultation with the person who is likely to command the confidence of the provincial legislature. From a study of the Instrument of Instructions there emerge four factors which may be said to form the corner stone of provincial autonomy. These factors are:

1. The appointment of a chief minister.
2. Responsibility of the ministry.
3. Minority representation in the ministry and
4. The principle of collective responsibility.

The appointment of a Chief Minister. The Governor is required to appoint his council of ministers in consultation with the person who commands the support of a majority in the provincial legislature. This simply means that such a person must be the leader of the majority in the legislature or be able to command the support of a coalition which must be in majority in the legislature. A person appointed to to have the same position and responsibilities as those of the British premier. The Act nowhere designates such a person as prime minister but in most of the provinces he is known as the 'Premier'.

Responsibility of the Ministry. The Governor is to appoint with the consultation of the premier such persons as ministers who are able to command the support of the majority collectively in the legislature. It means that when they lose the confidence of the majority in the legislature they should be dismissed by the Governor.

Minority Representation in the Ministry. It is not rigidly required that minorities must be represented in the provincial cabinet. If it is practicable well and good, but in cases when it is not found possible the representation of minorities in the Council of Ministers will not be insisted upon. The principle of joint responsibility is to be always kept in view, thus there must not be minority representation at the cost of collective responsibility and homogeneity of the cabinet. It was in view of this consideration that it was not found possible to take a Muslim minister in the Orissa cabinet.

Principle of Collective Responsibility. The Instrument of Instructions issued to the Governors requires the Governors to foster the sense of collective responsibility among his ministers. This implies joint deliberation and an adoption of the principle all for one and one for all. So far the Gevernors have been helpful in the working of this principle. It is only a sense of collective responsibility that can make party government a success. It was due to the principle of collective responsibility that the Congress cabinets could not find it possible to include members of the Muslim League in the ministries.

Dismissal of Ministers. The ministers are dismissed by the Governor in his discretion. This leads to many complications and makes ministries and ministers the creatures of the Governor. However, the procedure for the dismissal of ministers by the Governor is not so simple.

(1) According to the normal working of the cabinet principle a ministry must resign when it has lost the confidence of the legislature. The legislature can express its loss of confidence in the following manner :—

(*a*) It can defeat the ministry over an important bill by refusing to pass that bill ; or

(*b*) It can pass a regular no-confidence motion.

In the first case the ministry may make an effort to get a vote of confidence passed in its favour by the legislature. If it fails in its attempt it ought to resign. In the second case it must resign.

(2) A situation may arise when a ministry may be enjoying the confidence of the legislature, but not of the Governor. According to the Act the Governor in such a case can dismiss his ministry. It was demanded by the Congress that in such a case let the Governor dismiss his ministers and take upon himself the responsibility for creating a constitutional crisis, but this position was not acceptable to the Governor who in such a case would prefer the ministry to resign and not to be dismissed. In fact such a situation arose in Bihar and U. P., over the question of the release of political prisoners on which the Bihar and U. P. cabinets resigned and were not dismissed.

But intriguing situations may arise. What the Governor is to do if a minister refuses to resign ? This had happened in C. P. and Bengal. Dr. B. N. Khare, the Chief Minister in the Congress Cabinet of Central Provinces and Berar wanted to make certain changes in his cabinet. Accordingly he demanded resignations from two of his colleagues whom he wanted to replace. But both these gentlemen refused to oblige their chief. Then Dr. Khare himself tendered his resignation and the Governor in view of the principle of collective responsibility—the Chief Minister having resigned—dismissed the two ministers. The Governor's action raised a political storm of protest throughout the country. It is not necessary to discuss here in detail all the aspects of this question. But it must be pointed out that constitutionally the Governor in dismissing these two ministers acted within his rights.

In Bengal Maulvi Nausher Ali became news when he refused to resign when he was requested to do so by the Chief Ministar of the Bengal Cabinet. The Governor acting on the principle of joint responsibility of the ministers refused to dismiss Maulvi Nausher Ali with the result that the entire cabinet had to resign and when it was reconstituted the Maulvi Saheb was not included in it.

Powers of the Ministers. In all other matters in which the Governor does not exercise his discretion or individual judg-

ment or bears special responsibilities the ministry has full powers. However, in practice, the Governors in some of the provinces at least, generally consult ministers in respect of those matters also in respect of which they exercise their discretionary powers.

Criticism of the Provincial Executive. The executive authority of a province is exercised by the Governor either directly or through officers subordinate to him. His Council of Ministers is only 'to aid and advise' him and therefore ministers cannot be said to be subordinate to the Governor. Though the ministry has been given a legal basis in the constitution the ministry is not legally a part of the government. Their function is not to carry on the king's government in the province bur to 'aid or advise' the Governor to do so. The whole structure of the provincial executive seems to be paradoxical The Iastrument of Instruction enjoins the Governor to foster sense of collective responsibility, to keep in view the principle usual in the function of a cabinet while appointing his ministers, and the Act says that the Governor chooses, summons an ' dismisses his ministers in his sole discretion. They hold office during his pleasure. All this may imply that the ministrv is responsible theoretically but not actually. The Governor has vast discretionary powers ; the field over which he can exercise his individual judgment is quite extensive ; the matters in which he bears special responsibilities are not only numerous but vital. Taken collectively, the effect of all these powers and functions is that the most important part of the executive authority of the province is removed from the sphere of the popular ministers. The Governor is responsible for the birth, life and even death of a ministry in his province.

The legislative powers of the Governor reserve effective powers of control and initiative to him. From the moment of its being summoned to its dissolution the legislature is dominated by the Governor. " No act of the legislature is complete without the Governor's assent but no Governor's act needs the concurrence of the legislature to be binding."

Thus even under Provincial Autonomy the Governor is not merely the ornamental chief of the government, but is also its controlling, directing and dominating head. Provincial ministers are in realitv his nominees, to be called into meeting when he pleases, to deliberate under rules framed by him, and to administer departments of government allotted to them by the Governor. Certain classes of officers though working under the ministers are not under disciplinary subordination to their chiefs and can appeal to the Governor against any disciplinary action taken against them by the ministers.

If even under these conditions it is maintained that the Act of 1935 concedes a real measure of responsible self-government to the people, in the provinces, may one ask where is this responsible government to-day ? The introduction of Provincial Autonomy has a humourous touch also. It was offered to the people on April 1, 1937. Well, no one takes seriously anything

offered on the 1st of April and let the Englishman be assured that India has taken Provincial Autonomy in the spirit in which it was offered. In conclusion one may agree with Principal Siri Ram that ' the Provincial Autonomy had already been throttled by its authors before its corpse was presented to the eleven provinces on April 1, 1937.'

QUESTIONS AND TOPICS

1. Discuss the powers of the Governor.
2. Discuss the powers of control exercised by the Governor-General over the Governor.
3. Discuss the nature of the Provincial Executive.
4. Discuss the relations between the Governor and the ministers.

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CHAPTER 48

THE PROVINCIAL LEGISLATURE.

Introductory. The Act of 1935 introduces an innovation in the provinces. Whereas under the Act of 1919 provincial legislatures uniformly consisted of one chamber only the New Act establishes bi-cameral legislature in six of the provinces *viz.*: Madras, Bombay, Bengal, Bihar, United Provinces and Assam. The lower house in the provinces is called the Legislative Assembly and the upper house is called the Legislative Council.

Composition of the Provincial Legislative Assemblies. The strength of the legislative assembly in each is as follows :

1.	Madras ...	...	215 members
2.	Bombay ...	...	175 ,,
3.	Bengal ...	...	250 ,,
4.	United Provinces ...	...	228 ,,
5.	Punjab ...	...	175 ,,
6.	Bihar ...	...	152 ,,
7.	C. P. and Berar ...	...	112 ,,
8.	Assam ...	...	108 ,,
9.	N. W. F. Provinces	...	50 ,,
10.	Orissa ...	...	60 ,,
11.	Sind ...	...	60 ,,

The distribution of these seats amongst the various communities and interests is based on the Communal Award of August 4, 1932. The depressed classes, called the scheduled castes, are also given separate representation through a system which may be called sepatate-*cum*-joint electorate according to the terms of the Poona Pact arrived at between the caste Hindus and the representatives of the so called depressed classes. Thus the basis of the constituencies for the election to the Provincial assemblies is communal as seats are divided into :

1. General seats which are primarily meant for Hindus, but those communities also who have not been able to secure separate representation may contest these seats. Out of these a certain number has been set aside for the scheduled castes in accordance with the terms of the Poona Pact ;
2. Seats for Mohammadans ;
3. Seats for Indian Christians ;
4. Seats for Sikhs ;

5. Seats for Europeans ;
6. Seats for Anglo-Indians ;
7. Seats for Commerce, Industry, Mining and Planting interests ;
8. University seats ;
9. Seats for Labour ;
10. Seats for tribal and backward areas ; and
11. Seats for women which are again divided on communal basis.

The following table shows the composition of the provincial assemblies :

Distribution of Seats in the Provincial Assemblies.

Province	Total Seats	GENERAL SEATS		Seats for Backward Tribes and Areas	Sikh Seats	Mohammadan Seats	Anglo-Indian Seats	Euorpean Seats	Indian Christian Seats	Seats for Commerce Industry, Mining, etc.	Seats for Land-holders	University Seats	Seats for Labour	SEATS FOR WOMEN				
		Total	Reserved for Scheduled Castes											General	Sikhs	Mohammadan	Anglo- ndian	Indian Christian
Madras ...	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay ...	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal ...	250	78	30	—	—	117	3	11	2	19	5	2	9	2	—	2	1	—
U.P. ...	228	140	20	—	—	64	1	2	2	13	6	1	3	4	—	2	—	—
Punjab ...	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar ...	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
C.P. and Berar ...	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam ...	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
N.W.F. Province ...	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa ...	60	44	6	5	—	4	—	—	1	1	2	—	2	1	—	—	—	—
Sindh ...	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

It may be pointed out that seven of the General seats in the Presidency of Bombay are reserved for Marathas, and one of the landholders' seats in the Punjab is reserved for a Tumandar. Women's seats in Assam and Orissa are non-communal seats.

Tenure. A provincial assembly is elected for five years. Its life cannot be extended but it may be dissolved earlier by the Governor.

Election. The entire membership in the provincial assemblies is directly elected in the territorial constituencies under a system of separate communal electorate.

Franchise. The franchise qulifications which differ slightly from province to province may be grouped under :

1. Property qualifications, paying of taxes, of land revenue, or rent in the case of towns, or tenancy or paying of income-tax.
2. *Age.* A person for purposes of voting must be twenty-one years of age.
3. A person must be a British subject, or a ruler, or a state subject of an Acceded State or that of any other state as prescribed for the purpose.
4. *Educational Qualifications.* A person must have at least passed the primary standard. In some provinces all matriculates of 21 years of age are enfranchised. In others even a lower standard is recognised for purposes of voting.
5. *Military Service.* Retired, pensioned and discharged military officers, non-commissioned officers and men belonging to His Majesty's Regular Defence Services are entitled to vote.
6. *Residential Qualifications.* These differ from province to province.
7. There are special qualifications for women and scheduled castes.

Disqualifications :

1 People declared to be lunatics or of unsound mind.
2. Person whose name is not entered in the electoral roll.

Limitations on Voting. 1. Voters belonging to various communities must vote in their own communal constituencies. (Hindus vote in general constituencies.)
2. A voter can not vote in more than one constituency.
3. Women are entitled to one territorial vote and one special vote for women territorial constituency.

Qualifications for Candidates. 1. A candidate must be in possession of full franchise qualifications.
2. He must not be less than 25 years of age.

3. He must have certain additional property qualifications.

The above qualifications in respect of detail differ from province to province.

4. **Disqualifications.** The following are disqualified from membership in the provincial legislature :

1. If a person holds an office of profit under the crown in India (ministers excepted) holding an office other than an office declared by the Provincial Legislature not to disqualify a person holding it ; or
2. If of unsound mind ; or
3. Is an undischarged insolvent ; or
4. Has been convicted by a competent court and sentenced to transportation or imprisonment for not less than two years, unless five years, or any other period fixed by the Governor has elapsed since his release ; or
5. Is found guilty of corrupt practices at elections or any offence connected with elections which has been declared by a provincial legislature or by Order-in-Council to be involving disqualifications ; or
6. Fails to make a due and proper return of election expenses within a specified period, after having acted as an election agent or a candidate.

Franchise Qualifications in the Punjab. The franchise qualifications in the Panjab, as elsewhere, may be classified under

1. Residental qualifications.
2. Property qualifications.
3. Qualifications dependent on taxation.
4. Educational qualfications.
5. By reason of military service.

Residential Qualifications. A voter must be a resident in the constituency in which he is a voter. If a person owns a family dwelling-house or a share in a family dwelling house in a constituency and that such a place during the twelve months preceding a prescribed date, has not been let out or rented, will be taken as a satisfactory evidence that the voter is resident in the constituency.

Property Qualifications. A person is qualified to vote if he has one of the following qualifications :

1. If he owns land in the province paying at least an annual land revenue of rupees five.
2. Is an assignee of land in respect of which he pays Rs. 10 as an annual land revenue, or
3. Is a tenant of not less than six acres of irrigated land ; or
4. Of 12 acres of unirrigated land ; or
5. Owns immovable property in the province of the value of not less than Rs. 2000 ; or

6. Of an annual rental value of not less than Rs. 60 ; or
7. Occupies as a tenant immovable property of an annual rental value of not less than Rs. 60 ; or
8. Is a lambardar, zaildar, or sufaidposh.

Qualifications Dependent on Taxation.

1. Pays annually at least Rs. 50 as income tax, or municipal tax, or cantonment tax, or
2. Pays rupees two as haisiyat, or profession, or any other district board tax.

Educational Qualifications. If a person is proved in a prescribed manner to have attained the primary standard at least.

By Reason of Military Service If he is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular defence services.

Additional Qualifications for Women.

1. A woman has a right to vote if she possesses any of the above or one of the following qualifications :
   (*a*) If she is a pensioned widow, or mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ;

   Or

   (*b*) If she is known to be literate, *i. e.*, is able to read and write in some language or dialect selected by her ; or
2. Her husband possesses one of the following qualifications :
   (*a*) Pays at least Rs. 50 as income tax, municipal tax, or cantonment tax ; or
   (*b*) Owns immovable property of the value of not less than rupees four thousand, or of the annual rental value of not less than Rs. 96 ; or
   (*c*) Occupies as a tenant immovable property of an annual rental value of not less than Rs. 96 ; or
   (*d*) Owns land for which he pays Rs. 25 as annual land revenue ; or
   (*e*) Is an assignee of land revenue of not less than Rs. 50 a year : or
   (*f*) Is a tenant or lessee of at least three years' standing paying at least Rs. 25 as annual rent.

Special Qualifications for Scheduled Castes.

1. If a person is literate ; or
2. Owns immovable property of the value of not less than Rs. 50 ; or
3. Owns a malba of a house of not less than Rs. 50 ; or
4. Occupies as a tenant immovable property of an annual rental value of not less than Rs. 36.

Women, European and Indian Christian representation.

No person has a right to stand for these seats unless he

possesses the right to vote for electing a member to fill that seat or some other seat belonging to his own class or community.

Landholder's Seats. These seats in the Punjab Legisture are to be filled by the representatives of this class in the specified constituencies.

Tumandar's Seat. To vote for this seat a person must be a resident in the province and be a Tumandar or be acting as a Tumandar.

University Seat. Persons who are members of the Senate of the University of the Punjab, or registered graduates of the University of at least seven years' standing, registered at least two years previous to the prescribed date can vote. If a person does not possess the right to vote he can not stand as a candidate.

Strength and Composition of the Legislative Councils. It has been mentioned that bicameral legislatures have been established in six provinces. The seats in the legislative councils are filled in the following three ways :

1. Some members are elected on the basis of communal electorates from territorial constituencies. It means that Muslims vote for Muslim candidates, the Hindus vote for the General seats.
2. Some members are elected indirectly by the members of the Assembly under proportional representation by means of single transferable vote.
3. Some are nominated by the Governor in order to remove inequalities of representation resulting from election, specially in the case of scheduled castes and women.

Strength of the Provincial Legislative Councils.

Province.	Total of Seats	General Seats	Muhammadan Seats	European Seats	Indian Christian Seats	Seats to be filled by the Legislative Assembly.	Nomination by the Governor
Madras ...	54 to 56	35	7	1	3	...	8 to 10
Bombay ...	29 to 30	20	5	1	...	...	3 to 4
Bengal ..	63 to 65	10	17	3	...	27	6 to 8
U. P. ...	58 to 60	34	17	1	...	...	6 to 8
Bihar ...	29 to 30	9	4	1	...	12	3 to 4
Assam ...	21 to 22	10	6	2	...	...	3 to 4

Tenure. The Provincial Legislative Council is a permanent body. It can not be dissolved by the Governor. One-third of the members retire every three years. The members are elected for nine years. But when the council is first constituted the Governor in his discretion shall make provision so that the term of one-third of its members be only for thsee years and of another one-third only six years.

To be chosen a member of the council a person must be 30 years of age and must possess certain additional property qualifications to those possessed by a member of the Assembly. The franchise qualifications and disqualifications have been described in the foregoing pages. The franchise qualifications for the Council are higher than those for the Assembly.

Rights and Privileges of Members of Provincial Legislature. Before taking his seat in the Provincial Legislature every member has to take an oath of allegiance in a prescribed form. A person can not be a member of both the houses of a Provincial Legislature. If he is elected to both the Federal and the Provincial Legislatures, unless he resigns the membership of the Federal Legislature his seat in the Provincial Legislature falls vacant. If a person is elected to more than one seat in the Provincial Legislative Assembly he has to resign one of the seats within a prescribed period.

A person loses his seat in the Legislature when he is disqualified, or by resignation, or by absenting himself from the meetings of the legislature without permission for sixty days. Vacancies occurring in the legislature are filled by by-election.

The members of the provincial legislature enjoy the same privileges as are enjoyed by the members of the federal legislature. However, there are certain restrictions. The members do not have the right to—

1. discuss the official conduct of any judge of the High Court or of the Federal Court;
2. can not discuss the conduct of any Indian State Ruler or that of a member of the Ruling family, if it is so decided by the Governor in the exercise of his individual judgment;
3. can not discuss any Bill, clause or amendment if it is certified by the Governor as affecting his special responsibilities relating to the prevention of any grave menace to the peace and tranquility of the province.

Officers of the Provincial Legislature. The presiding officer of the Assembly who is elected by that body is called the Speaker. The Assembly elects a Deputy Speaker also. The Speaker presides over the meetings of the Assembly. conducts its business in a manner laid down by its procedure, pronounces rulings on matters brought to his notice. The same functions are performed by the Deputy Speaker in the absence of the Speaker. Both of these officers are removable om their office by a vote of no-confidence passed by the

Assembly at a fourteen days' notice. They can resign also. In case of a vacancy of both the offices the Governor can appoint a member of the legislature in the exercise of his discretion to perform the duties of the Speaker or the members of the Assembly may elect two of themselves to fill these offices. The salaries of the Speaker and the Deputy Speaker are fixed by the legislature The Speaker has only a casting vote. The President and the Deputy President perform the same functions in the Legislative Councils.

Meetings, Quorum and Voting. The provincial legislature meets at least once a year and not more than twelve months must elapse between one sitting and another, However, the Governor in the exercise of his discretion can summon and prorogue the legislature, or dissolve the lower house at any time he pleases.

All questions in either house of the provincial legislature or in the joint sitting of the two are decided by majority votes.

The quorum in the case of the Legislative Assembly is one-sixth of the total number of members. In the case of legislative Council it is ten.

Powers and Functions of the Provincial Legislature. The provincial legislature has the power to make laws on all matters included in the Provincial Legislative List. It has also the power to make laws on matters included in the Concurrent Legislative List. But in this case if there is a conflict between the law made by the provincial legislature and that made by the federal legislature, the law made by the federal legislature prevails as against the law made by the provincial legislature. It can make laws on those residuary subjects also which are assigned to it by the Governor-General.

The Provincial Legislative List. The following are the matters included in the Provincial Legislative List on which the provincial legislature can make laws.

PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of His Majesty's naval. military or air forces in aid of the civil powers); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention
2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions.
5. Public debt of the province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Provincial pensions, that is to say, pensions payable by the province or out of provincial revenues,
8. Works, lands and buildings vested in or in the possession of His Majesty for purposes of the province.
9. Compulsory acquisition of land.
10. Libraries, museums, and other similar institutions controlled or financed by the province.
11. Elections to the provincial legislature, subject to the provisions of this Act and of any Order in-Council made thereunder.
12. The salaries of the provincial ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the provincial legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of Provincial Legislature.
13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
14. Public health and sanitation; hospital and dispensaries ; registration of births and deaths.
15. Pilgrimages, other than pilgrimages to places beyond India.
16. Burial and burial grounds.
17. Education.
18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways; ropeways ; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage ports; vehicles and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases: veterinary training practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rent,s; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22 Forests.

23. Regulations of mines and oil-fields and mineral development subject to the provision of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gaswork.

27. Trade and commerce within the province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries. subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor, unemployment.

33. The incorporation, regulation, and winding up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the mattets in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotic ;'non-narcotic drugs ;

(*c*) medical and toilet prerarations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on land and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any court.

In addition to law-making the provincial legislature has the usual deliberative functions—holding debates, passing resolutions, moving adjournment motions, no-confidence motions and censure motions.

Limitations on the Powers of the Provincial Legislature. As is the case with the federal legislature the provincial legislature also is restricted in its functions. For example, it does not enjoy an exclusive or absolute authority in law-making on matters included in the Provincial Legislative List.

The federal legislature is competent to legislate for two or more provinces in a state of emergency proclaimed by the Governor General or with the consent of the provinces concerned.

The British Parliament still retains the right to make laws for any other part of India.

The provincial legislature is not allowed to discuss certain matters (mentioned in the preceding pages).

Bills dealing with certain matters cannot be introduced in the legislature without the previous sanction of the Governor, (These have been mentioned in the chapter on the Provincial Executive.)

Again, there are certain bills which cannot be introduced in the legislature without the previous sanction of the Governor-General.

Finally certain bills passed by the legislature are reserved for the Governor-General to be considered by him. Certain bills are reserved for the signification of His Majesty's pleasure.

Legislative Procedure. Each house regulates its own procedure and business. The Governor, in his discretion, after consultation with the Speaker or the President, as the case may be, makes rules regulating the procedure and the conduct of business in relation to matters in which he bears special responsibility and in which he is required to act in his individual judgment or discretion. The proceedings in the legislature are to be conducted in English unless a member is not acquainted with this language.

General. A bill other than a finance bill, may originate in either house. In provinces where there are two houses a bill is not deemed to have passed unless it (including the amendments) has been agreed to by both the houses. A pending bill does not lapse on the prorogation of the house or houses. A bill pending in or passed by the Assembly but pending in the Council lapses on the dissolution of the Legislative Assembly.

Joint Sittings. If a bill is not presented to the Governor within twelve months after it has been sent from one chamber to the other, the Governor may, in his discretion, call a joint sitting of the two houses of legislature. He may do so within a shorter period if the bill relates to finance or a matter of his special responsibility. The President of the Council presides at the joint sittings. If a bill is passed in a joint session by majority it is deemed to have been passed by both the houses.

A bill passed by the provincial legislature is presented to the Governor who may do any of the following things :

1. He may assent to it in the name of His Majesty, or
2. May withhold his assent, or
3. May reserve it for the consideration of the Governor-General, or
4. May return it to the chamber or chambers with a message to reconsider the whole of the bill or certain of its provisions. The legislature is bound to reconsider his proposals.
5. The Governor-General in his turn may receive a bill for the signification of His Majesty's pleasure.
6. A bill becomes an act only on receiving the assent of the Governor or the Governor-General or the crown as the case may be.
7. The crown may disallow any provincial act within twelve months of the date when it received the assent of the Governor or the Governor-General.

Procedure regarding Financial Matters. The act requires the Governor to place before the provincial legislature through the Finance Minister, a statement of the estimated receipts and expenditure of the province for that year.

This statement (the budget) must show separately :

(*a*) the moneys required to meet the expenditure charged on the provincial revenues, and

(*b*) the moneys required to meet any expenditure from the provincial revenues.

(*c*) If there are any sums included by the Governor in (*b*) as being necessary for the proper charge of his special responsibilities these must also be indicated.

The budget is divided into votable and non-votable items. The sums charged on the revenues of the province are not subject to the vote of the legislature. The following are the sums charged on the provincial revenues and hence non-votable by the legislature :

1. The salaries and allowances of the Governor and other expenditure relating to his office.
2. Debt charges.
3. The salaries and allowances of ministers, of the Advocate-General, and of the judges of the High Court.
4. Expenditure for excluded areas.
5. Sums necessary to satisfy any judgment, decree or award of any arbitration tribunal or court.
6. Any other expenditure charged so by the Act or any provincial Act. The Governor in the exer-

cise of his discretion decides whether it is to be charged so or not.

7. All other expenditure not charged on the province is to be submitted to the legislatute in the form of demands for grants and is subject to its vote.

8. No demand for grant can be made without the recommendation of the Governor.

9. After the vote of the legislature the Governor authenticates by his signature a schedule of grants made specifying—

(1) the grants made by the legislature, and

(2) moneys charged on the provincial revenues, and also

(3) grants reduced or refused by the legislature but included by him to discharge his special responsibilities.

This authenticated schedule forms the financial authority for the year. The Governor may submit a supplementary financial statement for additional expenditure whenever he consides it necessary.

It must be pointed out that no finance bill or any amendments to such bills can be considered by the provincial legislature except on the recommendation of the Governor.

All finance bills originate in the Lower House, but a bill which simply imposes fines or other financial penalties or regulates the demand and payment of fees for licences or fees for services rendered is considered a finance bill and may originate in the Legislative Council where there is a bicameral legislature.

Again, a bill the enactment and enforcement of which involves expenditure from the provincial revenues cannot be passed by the legislature except when the Governor recommends the consideration of such a bill.

Further there are special provisions in respect of the educational grants for Europeans and Anglo-Indians which can not be either altered or reduced by a simple majority vote of the provincial legislature.

Legislative Powers of the Governor. These have been noticed in the chapter on the provincial executive.

Failure of Constitutional Machinery. In case of a failure of the constitution in the province, the Act of 1935 authorises the Governor to assume to himself all functions of all or such bodies of the provincial government (exception : High Court) as he thinks necessary.

Conclusion. Thus it is obvious that even under Provincial Autonomy the provincial legislature is dominated and overshadowed by the personality of the Governor. In matters of legislation the powers of the Governor are such as to make the provincial legislature almost an impotent body for purposes of

law making. In the matters of finance the Governor is not only made an effective but co-ordinate even over-riding authority. Though the non-votable items do not cover such a large field as they do in the federal legislature, still it is no exaggeration to say that they deprive the provincial legislature of an effective control over the government of the province and make the responsibility of the ministers a fiction. In six provinces legislatures are bicameral. Frankly speaking there was no need of establishing a second chamber in the provinces where they are set up. The days of upper chambers based on old theories are no more. And yet an unnecessary wheel has been added to the constitutional machinery of the provinces. Without repeating details one may conclude that the provincial legislature is crushed under the weight of the powers of the Governor, the Governor-General and the crown; it is circumscribed in its sphere of activity and possesses a precarious existence.

QUESTIONS AND TOPICS.

1. Describe the powers of the provincial legislature.
2. Discuss the relations between the Governor and the provincial legislature.
3. Describe the procedure in respect of financial matters in the provincial legislature.

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CHAPTER 49.

THE PROVINCIAL JUDICIARY

Introductory. The provincial judicial organization comprises of a hierarchy of courts—both civil and criminal - culminating in a High Court or a Chief Court. However, there are revenue courts as well as courts of wards but these bodies are more in the nature of administrative arrangement than parts of theregular judicial organization.

It needs to be pointed out that there is no separation of judicial and executive functions in the provincial sphere. For example, the Tahsildar, the Sub-Divisional Officers and the Deputy Commissioners are also armed with judicial powers. In some of the provinces the ex-Congress governments made an effort to separate judicial and executive organs. The honorary magistrates and the courts of arbitration supply the background of the provincial judicial administration.

The High Courts. The high courts are the highest judicial tribunals in the provinces. The following courts are recognised as high courts in British India :

1. The high courts at Calcutta, Madras, Allahabad, Patna, Lahore and Bombay.
2. The High Courts for C. P and Berar (converted from the Judicial Commissioner's court by an Order-in-Council in February 1936).
3. The Oudh Chief Court.
4. The Judicial Commissioners' Courts in N. W. F. Province and Sindh.

The Assam is the only Governor's province without a high court. The Act of 1935 (Section 212 (1)) provides that any other court in British India, constituted or reconstituted under this Act as a high court is to be taken as a high court. Also any other comparable court in British India is to be taken as a high court, which may be declared so by His Majesty in Council. This simply means that new high courts may be created or the existing courts may be converted into high courts.

Composition and Strength of High Courts. Each provincial high court consists of a chief justice and such judges as His Majesty may please to appoint. But the number of judges appointed must not exceed the maximum fixed for each high court by His Majesty in Council. The maximum number of judges which can be appointed to each high court as fixed by

the Government of India (High Court Judges) Order 1937 is as follows:

1.	The High Court at Calcutta	... 19 Judges
2.	The High Court at Madras	... 15 ,,
3.	The High Court at Bombay	.. 15 ,,
4.	The High Court at Allahabad	... 12 ,,
5.	The High Court at Patna	... 11 ,,
6.	The High Court at Nagpur	... 7 ,,
7.	The High Court at Lahore	... 15 ,,
8.	The Oudh Chief Court (Lucknow)	... 5 ,,
9.	The Court of the Judical Commissioner, N. W. F. Province	... 2 Assistant Commissioners
10.	The Courts of the Judicial Commissioner of Sind	... 5 ,,

Appointment and Tenure. The high court judges are appointed by His Majesty and not by any authority in India. However, the Governor-General, in his discretion, can appoint a temporary chief justice from amongst the judges of the high court, or any person duly qualified as a judge. He can also appoint such qualified persons for two years as additional judges.

The high court judges hold office during good behaviour and retire at the age of sixty. But they may retire earlier by resignation. They are removable from office by His Majesty on grounds of misbehaviour, physical incapacity or mental infirmity, if the judicial committee of the privy council makes a report to the effect.

Qualifications for Judges. The qualifications required for judges are somewhat negative in character. According to section 220 (3) of the Act these are:

> A person shall not be qualified for appointment as a judge of a high court unless he—
>
> (*a*) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing;
>
> *Or*
>
> (*b*) is a member of the Indian civil service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge;
>
> *Or*
>
> (*c*) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court; or
>
> (*d*) has for at least ten years been a pleader of any high court; or two or more such courts in succession,

Provided that a person shall not, unless he is, or when first appointed to judicial office was a barrister, a member of the Faculty of Advocates, or a pleader, be qualified for appointment as chief justice of any high court constituted by letters patent until he has served for not less than three years as a judge of a high court.

In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

Payment of Judges. The salaries and allowances of the High Court judges, including equipment and travelling expenses, on their first appointment, as well as their leave allowances and their pensions are fixed by Order-in-Council from time to time. These cannot be varied during the term of a judge to his disadvantage.

Jurisdiction and Functions. All high courts have superintending jurisdiction (section 224) over all courts in British India which are subject to their appellate jurisdiction for the time being.

The high courts at Madras, Bombay and Calcutta have original as well as appellate jurisdiction. Other high courts possess only appellate jurisdiction. Every high court may—

(*a*) call for returns ;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and

(*d*) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

" Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor."

The high court has a special jurisdiction (section 225) to transfer certain cases to itself from subordinate courts, if these cases involve any Provincial or Federal Act. But in cases involving Federal Acts such transfer can be made on the application of the Federal Advocate General, or if these involve Provincial Acts, on the application of either the Provincial Advocate General or the Federal Advocate General.

Appeal to the Council. An appeal lies with or without leave, as the case may be, from the decision of the high court to

the privy council. But if it is certified by the high court that the case involves a question of constitutional law or of legal rights then it lies to the Federal Court.

Subordinate judicial machinery. The subordinate judiciary in a province is placed under the general control and supervision of the high court which controls, the subordinate judiciary with regard to postings, promotions and leave (exception : district judges) subject to the conditions of their services. The members of the subordinate judiciary have a right of appeal to the Governor.

The appointments to the subordinate judiciary are made by authorities in India.

The district judges, the chief judge of a Small Cause Court, the chief presidency magistrate, the sessions judges, judges of this rank are appointed by the Governor on the recommendation of the minister concerned after consultation with the high court. For inferior appointments the recommendation of the minister must have the approval of the Public Service Commission as well as the high court. Appointments from the members of the bar to any judicial office must be made from amongst the persons nominated by the high court, subject to regulations of general policy and communal representation in such appointments.

The promotions in respect of district judges are made on the recommendation of the minister incharge after consultation with the High Court but the Governor may reject any recommendation in the exercise of his discretion.

In cases of criminal judiciary, recommendation for grant, enhancement or taking away of magisterial powers to or from any member of the criminal judiciary can not be made without the consultation of the district magistrate or the chief presidency magistrate as the case may be. The various grades of criminal courts have varying jurisdiction to try and dispose of particular kinds of cases as specified in the appropriate code. Every death sentence passed by any court lower than the high court must be confirmed by the high court.

Conclusion. The Act of 1935 has made the provincial judiciary subject to the control of the provincial government in general. The administration of justice has been made a provincial subject. The provincial legislature has been given power to curtail the powers and the jurisdiction of the provincial high court. The high courts have been made independent by excluding the salaries and allowances from being touched by the provincial legislatures. The expenses of the high court are only discussable but not votable by the legislature. Any bill derogating from the powers of the high court may be reserved by the Governor and the Governor-General for the signification of the pleasure of the crown. The official conduct of any judge of the high court can not be discussed by the provincial legislature.

All this has another side also. It is said that this means that the power of appointment, punishment, censure or dismissal is vested in 'non-Indian hands or extra-Indian authorities.' The provincial legislature as well as the ministry is denied any financial control over the high court. Further the civil service element in the judicial administration is not a good feature. It has always been regarded by Indian nationalist opinion with suspicion, because members belonging to this service tend to bring 'the outlook and view point of the executive while functioning as judges of the high court.' This leads one to say that by including this element in the judiciary the British constitutional practice of keeping the executive and judiciary strictly apart is violated.

QUESTIONS AND TOPICS

1. Write a short essay on the position of the provincial high court in relation to the provincial government,

CHAPTER 50.

RELATIONS BETWEEN THE FEDERATION AND ITS UNITS.

The relation, between the federation and its units, may be grouped as follows :—

1. Legislative.
2. Administrative.
3. Judicial.

Legislative. Broadly speaking, the provincial and the federal spheres of legislation have been separated by making separate Federal, and Provincial Legislative Lists. But the Act authorises the federal legislature to legislate on matters included in the Provincial Legislative List :

(*a*) except for Governors' and Chief Commissioners' provinces ;

(*b*) for all areas and provinces if the Governor-General of India declares, in the exercise of his discretion, by a 'Proclamation of Emergency' that a state of emergency has arisen whereby the security of India is endangered ; and

(*c*) by the consent of the provinces concerned the federal legislature can legislate for two or more provinces.

In matters of concurrent legislation the Federal Law prevails over the Provincial Law. But the federal legislature is not empowered to make any law which is repugnant to any provincial law which has received the assent of the Governor-General or the King without the previous sanction of the Governor-General given in his direction.

So far as the federated states are concerned the federal legislature can legislate only in accordance with the provisions in the Instrument of Accession. In cases of conflict Federal Law is to prevail over the law of the federated state.

Administrative. The Governor-General is empowered to issue orders to the provincial governors and directions to the rulers of Acceded States, for securing that the federal executive authority is not prejudiced or obstructed.

The Governor is directed by the Governor-General in his discretion to perform certain agency functions for the latter officer.

The Governor-General has the right to decide whether the Provincial or Federal Law shall prevail in matters of concurrent legislation.

The Governor-General bears special responsibilities with regard to water supply regarding which disputes between provinces, and provinces and states are sure to arise.

The Governor-General shall ascertain the views of the Acceded States and the provinces upon any legislative measures proposed before the federal legislature for the imposition of taxes in which they are concerned.

The executive authority of the federation will generally be exercised by the rulers of the Acceded States.

Judicial. These have been discussed in the chapter on Federal Judiciary.

Conclusion. The provinces have been accorded provincial autonomy under the Act of 1935. But it is obvious from the above as well as from the preceding pages that the provinces are still under the domination of the Central Government. The position which the Governor-General occupies in the federation and the authority which he wields over the provinces is not conducive to the proper working of provincial autonomy. It is said that the provinces under the new Act have ceased to be merely the agents of the Central Government, but it will be clear to any one that they are dominated by the Governor-General to an extent which almost makes provincial autonomy a farce.

The federated states in their relations to the federation are better placed. Their position has been discussed in the chapter on Indian States in the Federation.

CHAPTER 51.

TRANSITIONAL PERIOD.

Introductory. The Government of India Act was passed in 1935. But only one part of it has been put into operation. Provincial Autonomy was introduced in British India on April 1, 1937. The federation is yet to come. When will it come ? No one knows. Will it be of the 1935 model ? It is doubful perhaps certain, that the 1935 model will be discarded as out of date. With the introduction of Provincial Autonomy and the Federation hanging in the air certain adjustments had to be made at the centre. The provisions making these adjustments are contained in the Act and are called the transitional provisions :

1. The Act of 1919 is repealed by the Government of India Act, 1935. But the preamble to the Act of 1919 is not repealed.

2. Wherever reference is made in these provisions to the Governor-General and the federal government it means the Governor-General in Council (not where the Governor-General is required to act in his discretion). Reference to the federation for the purpose of these provisions means British India.

3. **Provisions with regard to the Governor-General.**

   (*i*) The functions of the Viceroy are not conferred upon the Governor-General.

   (*ii*) The powers with regard to the special responsibilities are not yet conferred upon the Governor-General.

   In the reserved departments, the provisions requiring his previous sanction for certain bills, provisions in respect of broadcasting, those which concern the directions to and the principles to be observed by the Railway Authority, provisions in respect of civil services recruited by the Secretary of State for India shall come into force.

   (*iii*) During the transitional period, the executive authority of the central government is exercised by the Governor-General-in-Council. This authority extends to all matters on which the federal legislature is competent to make laws subject to the restrictions imposed by the Act of 1935.

The Secretary of State.

(*i*) The Secretary of State will have a Council of Advisers, not more than twelve and not less than eight, during the transition period.

(*ii*) The Secretary of State is to exercise general control over the Governor-General in all matters in which he has to exercise his discretion.

(*iii*) The Secretary of State can give directions to the Governor-General-in-Council in financial matters only on the advice of his advisers.

(*iv*) The Secretary of State may control sterling loans during the transition period on behalf of the Governor-General-in-Council.

The Legislature.

(*i*) With regard to British India the existing central legislature will exercise the powers of the federal legislature in certain matters.

(*ii*) It is not authorised to exercise any control over the executive.

(*iii*) It can limit the powers of borrowing of the Governor-General-in-Council.

Some other Federal Authorities.

(*i*) It is provided by the Act that during the transition period the Federal Court, the Railway Authority, and the Federal Public Service Commission may be established. These have been created.

(*ii*) The rights and liabilities of the transitional government are to become the rights and liabilities of the federal government. Laws enacted by the transitional government are to be regarded as federal laws. Any proceedings against or by it shall be continued against or by the federal government.

As has been pointed out, the federation is yet far away. The present Political situation within India and the international situation in the world are bound to affect the Government of India Act, 1935 which may have to be entirely ignored.

CHAPTER 52.

THE PUBLIC SERVICE COMMISSIONS.

Provincial. The Act provides for the establishment of a Public Service Commission for each province. Two or more provinces may agree to have a joint Public Service Commission (*e.g.*, the Punjab and the N. W. F. P.). An agreement reached between the two provinces concerned will specify which Governor or Governors will discharge the functions of the Governor of the province in relation to the Public Service Commission. The Federal Public Service Commission may also serve the needs of any province if it is requested to do so by the Governor of a province.

Appointment. The chairman and other members of the commission are appointed by the Governor in his discretion. One half of the members appointed must be persons who have been in the service of the Crown in India for at least ten years.

The Governor determines in his discretion (by means of regulations) the strength of the commission, the tenures of the commissioners and their conditions of service as well as the number of the staff of the commission and their conditions of service.

Functions. The commission is to conduct examinations for the appointment to provincial services.

The commission is consulted on the following matters :

(*i*) All matters concerning methods of recruitment to civil services and civil posts.

(*ii*) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.

(*iii*) On all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters.

(*iv*) On any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the provinces or of the federation as the case may be.

(*v*) On any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award (Sections 264—266).

(*vi*) To advise the Governor on any matter referred to it by him.

Limitations on the functions of the Commission. The Governor of a province may make regulations in the exercise of the discretion specifying matters in which he need not consult the provincial Public Service Commission.

The commission has no right to be consulted with regard the communal representation in the services.

The salaries and allowances of the commissioners and the expenses of the commission are charged on the revenues of the province.

Federal Public Service Commission. Composition. . The Federal Public Service Commission has been established under the Act of 1935. The members and the chairman of the commission are appointed by the Governor-General in the exercise of his discretion. One-half of the members appointed are to be persons having experience of service under the crown in India for at least ten years.

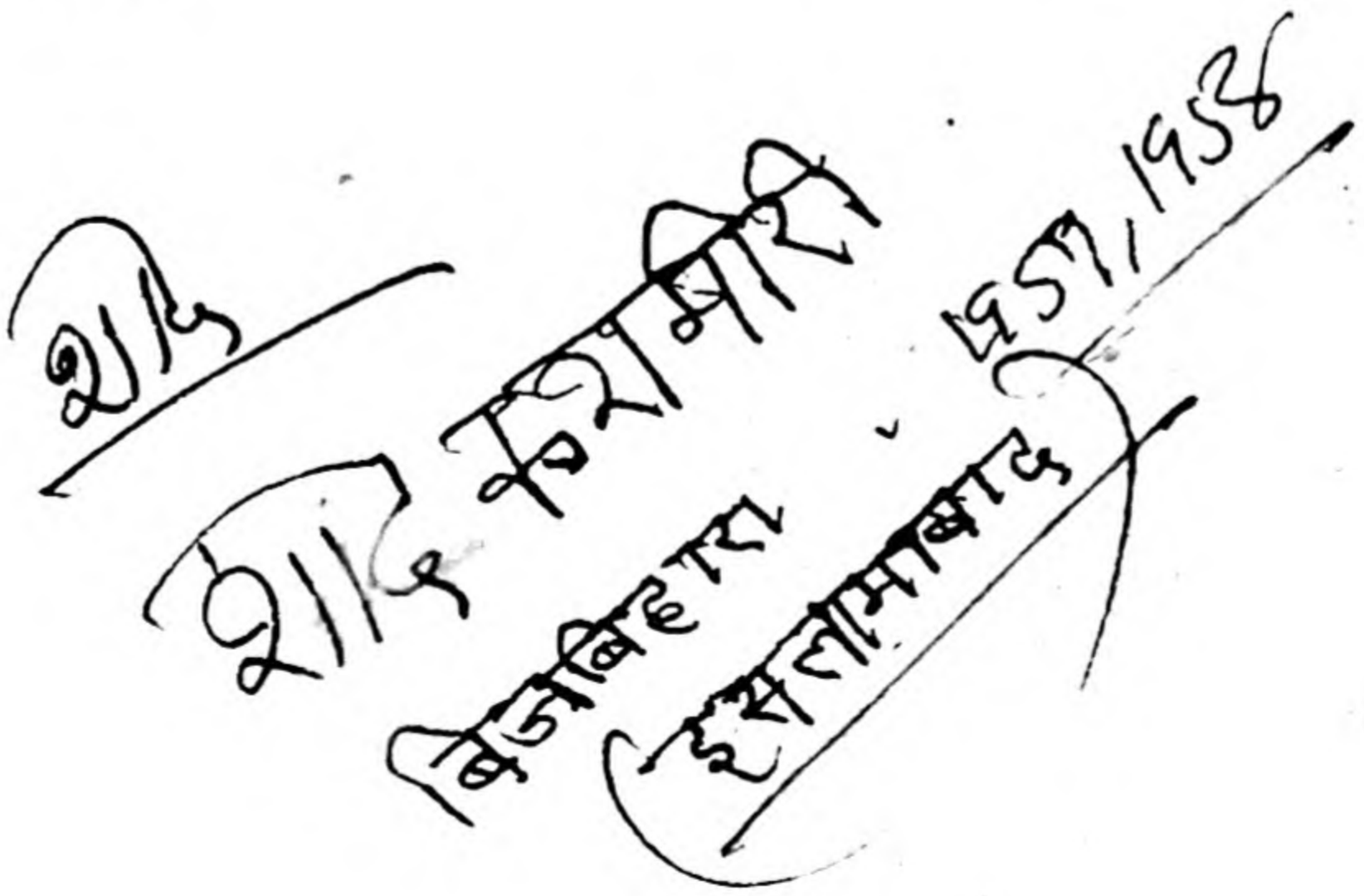
The strength of the commission, the terms of office of the members, their conditions of service as well as the number of the staff of the commission and their conditions of service are determined by the Governor-General.

Functions. It performs the same functions with regard to federal services as are performed by the provincial Public Service Commission in respect of Provincial Civil Services.

There are the same limitations on its powers as are placed on the powers of the Provincial Commission.

The federal legislature can extend the sphere of functions of the Federal Service Commission.

The salaries and allowances of the commissioners and the federal expenses of the commission are charged on the revenues of the federation.



CHAPTER 53.

AMENDMENT OF THE CONSTITUTION.

Introductory. The Indian legislature is a law-making body and not a constituent Assembly. It has no constituent powers. The dominion legislatures have constituent powers since the passing of the Statute of Westminster, 1931.

The Act of 1935 can be amended *only* by the British Parliament. Neither the federal legislature nor any of the Provincial legislatures have power to amend any part of the 1935 Act.

The Act authorises amendment in minor matters by Order-in-Council with the assent of the British Parliament on request by the federal legislature or provincial legislatures, but not earlier than ten years as a rule from the establishment of the Federation or Provincial Autonomy.

The following are the matters in which amendments may be made :

1. The size and composition of the chambers of the federal legislature and the choice and qualifications of members, but not so as to change the relative proportion between the Council and the Assembly *or* between the British Indian and the states' seats.
2. The number of chambers in the provincial legislatures, their size or membership.
3. The establishment of literacy in lieu of any higher educational qualifications for women's franchise.
4. Any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

Procedure. In the first instance, federal or provincial legislature on the motion of a minister, on behalf of the government, should pass a resolution approving the required amendment of this Act or of the Order-in-Council, as the case may be made under it. Then these legislatures on the motions moved in the same manner should present to the Governor-General or the Governor, as the case may be, an address for being submitted to the crown praying that the resolution be conveyed to the Parliament. After this the Secretary of State for India within six months after the resolution has been so conveyed shall lay before the Parliament a statement of the action proposed.

As if it were not enough the Governor-General or the Governor, as the case may be is required to send with the resolution his opinion with regard to the effect which the proposed amendment will have on the interests of various minorities.

THE END.

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